



CITY OF PHILADELPHIA

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Philadelphia Board of Ethics
Board Opinion No. 2016-002

July 26, 2016

Nicholas J. Scafidi
Interim Executive Director and General Counsel
Philadelphia Land Bank
1234 Market Street, 17th Floor
Philadelphia, PA 19107

Re: Application of City Ethics and Lobbying Laws to the Land Bank

Dear Mr. Scafidi:

You requested a public advisory opinion from the Board of Ethics regarding the application of the City ethics and lobbying laws to the Philadelphia Land Bank, its board members, and staff. You also posed six specific questions that are addressed below.

I. Jurisdiction

The Pennsylvania Code authorizes a city of the first class to create a land bank by ordinance subject to terms and conditions the city deems reasonable and necessary for the land bank's operation. 68 Pa. C.S. § 2104. The City of Philadelphia created the Philadelphia Land Bank by adopting the Land Bank ordinance found at The Philadelphia Code ("Code") Chapter 16-700 ("Land Bank ordinance"). The ethics provision of the Land Bank ordinance states:

The Land Bank shall be governed by the State Adverse Interest Act of July 19, 1957 (P.L. 1017, No. 451) and 65 Pa. C.S. Ch. 11 [the State Ethics Act] (relating to ethics standards and financial disclosure). The Land Bank shall also be governed by § 20-600 (Philadelphia’s “Standards of Conduct and Ethics”) and § 20-1200 (“Lobbying”). As part of its policies, the Land Bank shall adopt strict ethical guidelines for Land Bank board members and employees, and promulgate rules addressing and protecting against potential conflicts of interest. These guidelines and rules shall supplement any applicable state and local laws.

Code § 16-709(2) (“Ethics and Conflicts of Interest”). The ethics provision of the Land Bank ordinance thus provides that the Land Bank is governed by the City Ethics Code, found at Code Chapter 20-600, and the City Lobbying Code, found at Code Chapter 20-1200, laws over which the Board of Ethics has jurisdiction. The ethics provision of the Land Bank ordinance otherwise echoes ethics restrictions for a land bank that are identified in the Pennsylvania Code. *See* 68 Pa. C.S. § 2115 (providing that board members and employees of a land bank shall be subject to the State Adverse Interest Act and the State Ethics Act and that a land bank may adopt supplemental conflict of interest rules and other ethical guidelines).

The Philadelphia Home Rule Charter vests the Board with the authority to administer and enforce all Charter and ordinance provisions pertaining to ethical matters. Charter § 4-1100. In addition to the substantive areas explicitly identified in Charter Section 4-1100, the Charter provides that the Board shall exercise such other powers and duties vested in and imposed upon it by ordinance and as City Council may from time to time assign the Board. *Id.* Therefore, pursuant to Charter Section 4-1100 and Code Section 16-709(2), the Board has the authority to determine the application of the Ethics Code and the Lobbying Code to the Land Bank and to provide for advice, administration, and enforcement of these ethics and lobbying provisions as to the Land Bank. *See id.*; Code § 16-709(2).

The Board renders advisory opinions concerning proposed future conduct to any person who is subject to, or reasonably could be subject to, a law within the Board’s jurisdiction. Board Reg. 4 ¶ 4.5; *see also* Charter § 4-1100; Code § 20-606(1)(d). Board Regulation 4 describes the procedures for seeking an advisory opinion and for requesting reconsideration of an advisory opinion issued by the Board. Board Reg. 4 ¶¶ 4.0, 4.26.

The Pennsylvania Public Official and Employee Ethics Act (“State Ethics Act”), 65 Pa. C.S. §§ 1101 *et seq.*, contains restrictions that are separate from and in addition to those imposed by City ethics laws. The Philadelphia Home Rule Charter grants the Board jurisdiction to render advisory opinions regarding the State Ethics Act. *See* Charter § 4-1100. The Board’s authority to provide advice on the State Ethics Act is limited, and guidance from the Board regarding the State Ethics Act is not binding on any person and does not provide any protection against penalties or sanctions for a violation of the Act. Board Reg. 4, ¶ 4.4. For these reasons, provisions of the State Ethics Act that may be relevant to your request are merely outlined below. It is recommended that you seek specific advice from the State Ethics Commission concerning the application of the State Ethics Act to Land Bank board members and staff. An opinion from the State Ethics Commission provides protection from certain enforcement and penalties imposed for a violation of the Act. 65 Pa. C.S. §§ 1107(10), (11).

This Opinion does not address the application of the State Adverse Interest Act, which also applies to Land Bank board members and staff, because the Board does not have authority to opine on the State Adverse Interest Act.

II. Facts Provided by Requestor

This Opinion relies upon facts provided in your request letter dated March 12, 2016 and accompanying exhibits. The request letter is attached as Exhibit 1, and exhibits to the request letter are attached as Exhibits A and B. In addition to the request letter, you also provided facts through telephone conversations and subsequent confirming emails as described below.

A. May 9, 2016 Telephone Conversation and Confirming Emails

The Land Bank has twelve full-time staff positions consisting of six clerical positions and six non-clerical positions. The non-clerical positions are as follows: (1) Interim Executive Director and General Counsel; (2) Deputy Executive Director; (3) Director of Information Systems; (4) Director of Property Management; (5) Director of Property Disposition; and (6) Director of Analytics. The clerical positions include: (1) Data Services Support Clerk; (2) Housing Rehabilitation Inspector II; (3) three Clerk III positions; and (4) Service Representative I.

B. April 13, 2016 Telephone Conversation and April 14, 2016 Confirming Emails

You provided the facts directly below during an April 13, 2016 telephone conversation with Board staff and through confirming emails on April 14, 2016.

The Land Bank is involved in “transactions involving the City” as that term is defined in Code Section 20-601(27) in three main ways:

1. One way for the Land Bank to acquire land is to take title for that land from the City.
2. When the Land Bank acquires property at a City tax foreclosure sale, the City forgives its debt on that property.
3. The Land Bank requires City approvals (from City Council and the Vacant Property Review Committee) for every sale or lease (regardless of length of lease) of Land Bank property.

Much of the Land Bank’s work will include transactions involving the City, such as when the Land Bank wishes to acquire land from the City and in every instance where the Land Bank wishes to dispose of property in some fashion.

One example of a transaction in which the Land Bank engages that would not be a transaction involving the City is a contract with a software provider to develop a better IT program. This is an example of an organizational issue that does not involve the City or require City approval.

The Land Bank does not handle any adjudicative matters and does not conduct adjudications.

III. Discussion

The Land Bank ordinance provides that the Land Bank is governed by the City Lobbying Code and the City Ethics Code. The general application of these City laws to the Land Bank and its board and staff members is discussed below. Responses to six questions you have posed also follow.

A. City Lobbying Law

The Land Bank ordinance provides that the Land Bank is governed by City Code Chapter 20-1200, the Lobbying Code. Code § 16-709(2). As a result, the requirements and prohibitions of the City Lobbying Law provided in Code Chapter 20-1200 and Board Regulation 9 apply to efforts by lobbyists and principals to lobby the Land Bank. For example, a principal whose expenditures for lobbying of the Land Bank exceed \$2,500 in a quarter must register with the Board of Ethics. *See* Code §§ 20-1202(1), 20-1204(6); Board Reg. 9 ¶ 9.14.

Lobbying of the Land Bank entails efforts to influence administrative action or legislative action by the Land Bank and members of its board or staff. Code § 20-1201(18) (defining lobbying); Reg. 9 ¶ 9.1(X) (same). The terms “agency” and “City official or employee” are integral to the definitions of key concepts in the City Lobbying Law, such as lobbying, legislative action, administrative action, direct communication, and indirect communication. *See* Code §§ 20-1201(1), (9), (15), (17), (18). For purposes of application of the City Lobbying Law, the Land Bank is considered an “agency” and a Land Bank board or staff member is considered a “City official or employee.” *See* Code § 20-1201(3), (7) (defining “agency” and “City official or employee”); Board Reg. 9 ¶ 9.1(D), (J) (same). When the Board next amends Regulation 9 on Lobbying, the definitions of “agency” and “City official or employee” will be adjusted to reflect this coverage of the Land Bank and members of its board and staff as required by the Land Bank ordinance at Code Section 16-709(2).

B. City Ethics Code

The Land Bank ordinance provides that the Land Bank is governed by City Code Chapter 20-600, the City Ethics Code. Code § 16-709(2). Thus, the prohibitions and requirements of the Ethics Code apply to Land Bank board members and staff members. Based on the facts provided, the Land Bank has a structure that is similar to that of a City board or commission that is headed by a board comprised of part-time, uncompensated individuals who oversee a full-time, compensated staff. Taking note of this structure, we interpret the following Ethics Code terms as set forth below for the purpose of applying the Ethics Code to Land Bank board members and staff members:

- (1) References to “board” or “commission” in the Ethics Code include the Land Bank. *See, e.g.*, Code §§ 20-601(4) & (18), 20-602, 20-604, 20-610.

- (2) The term “agency” includes the Land Bank. *See* Code § 20-601(1).
- (3) The term “board or commission member” includes a Land Bank board member. *See* Code § 20-601(4).
- (4) The term “officer or employee” includes a Land Bank board member as well as a Land Bank staff member. *See* Code § 20-601(18).
- (5) The term “transaction involving the City” includes transactions involving the City or the Land Bank. *See* Code § 20-601(27).

Consequently, Ethics Code provisions apply to Land Bank board members in the manner they apply to members of a City board or commission. For example, Land Bank board members are required to attend annual ethics training and to file an annual statement of financial interests, commonly referred to as the City financial disclosure form.¹ *See* Code §§ 20-606(1)(b)(iii), 20-610. Similarly, Land Bank board members are not required to obtain written approval prior to accepting a gift from a restricted source that would benefit the City or the Land Bank and is reasonably related to their duties. *See* Code § 20-604(3)(k), (6)(a).

By contrast, Ethics Code provisions apply to Land Bank staff members in the manner they apply to City employees. Accordingly, Land Bank staff members are not subject to the annual ethics training and financial disclosure requirements of the Ethics Code, but Land Bank staff members must obtain written approval from the Executive Director of the Land Bank, or his or her designee, prior to accepting a gift from a restricted source pursuant to the gift ordinance exemption for a benefit to the City or the Land Bank. *See* Code §§ 20-604(3)(k) & (6)(c), 20-606(1)(b)(iii), 20-610.

Although many Ethics Code provisions are discussed in this Opinion, including in response to questions you posed, please refer to Code Chapter 20-600 for all restrictions and requirements of the Ethics Code. Please also note that Bill Number 160514 was introduced in City Council on May 19, 2016 and proposes to amend the conflict of interest provisions of the Ethics Code. The advice provided in this Opinion reflects application of these conflict of interest provisions as they currently stand.

¹ The City financial disclosure form requirement at Code Section 20-610(2)(c) regarding reporting of certain real estate interests, including those subject to action by a City board or commission, would include disclosure of any Land Bank-related interests, such as land sold or leased to or purchased or leased from the Land Bank. *See* Code § 20-610(2)(c).

C. Six Ethics Code Questions

The questions below regarding application of the Ethics Code are taken verbatim from your request letter at Exhibit 1, pages 5-7, but they are presented in a different order than in the request letter. In several instances the questions presented are general and lack specific facts. As a result, the corresponding responses provide only general guidance and illustrative examples. This is because ethics advice is highly fact-specific. If members of the Land Bank board or staff have questions about particular situations, they should seek specific guidance about the application of the City ethics laws to their particular facts.

1. Pre-Service Employment Relationship

Question: “What are the obligations for a Land Bank Board Member who was employed by an organization that is now seeking to do business (*e.g.*, as vendor or purchaser) with the Land Bank (*i.e.*, a ‘pre-service’ relationship)?”

Response: The Ethics Code does not contain a prohibition that applies to pre-service employment relationships that have terminated. As such, a Land Bank board member does not have a conflict of interest with respect to a former employer and is permitted to take official action that affects an organization that was formerly the board member’s employer. This assumes that no current relationship exists between the Land Bank board member or a relative and the organization that would give rise to a conflict of interest, such as a retained ownership interest in the organization. *See* Code § 20-607 (an official has a conflict of interest under the Ethics Code if the official is financially interested in official action or if a financial interest resides in certain relatives or a fellow member of a for-profit business); *see also* 65 Pa. C.S. § 1102 (an official has a conflict of interest under the State Ethics Act in using the authority of public office for the private pecuniary benefit of the official, certain relatives, or a business – including a non-profit entity – with which the official or a relative is associated).

Note that Code Section 20-609 prohibits a Land Bank board member from directly or indirectly disclosing or making available confidential information concerning the property, government or affairs of the City or the Land Bank without proper legal authorization for the purpose of advancing the board member’s own financial interest or the financial interest of any other person. *See* Code § 20-609. Therefore, a Land Bank board member is barred from sharing confidential information about the City or the Land Bank with the board member’s former employer.

2. Post-Service Restrictions

Question: “Post-Service Restrictions. May a Land Bank Board Member become an employee of an organization that obtained a contract with the Land Bank while that Member served on the Land Bank Board?”

Response: The Ethics Code does not contain a general restriction that would prohibit a former Land Bank board member from becoming an employee of an organization merely because that organization obtained a contract with the Land Bank while that individual served on the Land Bank board. The Ethics Code includes two post-service restrictions that are described below.

The conflict of interest provision at Code Section 20-607(c) prohibits a Land Bank board member from acquiring a financial interest in official action taken as a Land Bank board member during service on the Land Bank board and for two years after service ends. *See* Code § 20-607(c). For example, if a Land Bank board member took official action related to awarding a contract to an organization to provide services to the Land Bank, that board member would be prohibited, while sitting on the Land Bank board and for two years after completing Land Bank board service, from having money flow to him or her as a result of that contract having been awarded to the organization that now employs him or her. The former Land Bank board member would be barred from receiving compensation for work conducted or funds received pursuant to the organization’s contract with the Land Bank that he or she had participated in awarding.

Merely working for the organization in a manner that would be unconnected to the acquisition of a financial interest in the contract award would not be prohibited. To illustrate this point, suppose that a Land Bank board member votes to award a two-year contract to a tech company to provide technical assistance to the Land Bank. One month later, the board member’s service on the Land Bank board ends. One year after that, she decides to apply for a job with the same tech company. She may apply for the job, may accept employment with the tech company, and may work at the tech company on projects that do not involve the Land Bank contract. As an employee of the tech company, she would be prohibited until the two-year anniversary of the end of her Land Bank service from performing the contracted work for the Land Bank or from having her salary be paid from money the tech company receives as a result of the Land Bank contract that she had been involved in awarding.

A second Ethics Code post-service restriction, which is found at Code Section 20-603, would not apply to Land Bank board members because the provision applies only to

individuals who have been compensated for their service to the Land Bank, such as former Land Bank staff members. *See* Code § 20-603. This restriction would prohibit a former compensated Land Bank staff member from assisting another person, whether or not for compensation, in any transaction involving the City or the Land Bank² in which the individual participated while serving the Land Bank. *See id.* This restriction applies at any time subsequent to the staff member’s Land Bank service.

In addition to the post-service restrictions of the Ethics Code, the State Ethics Act imposes a restriction on former public officials and former public employees. *See* 65 Pa. C.S. § 1102 (defining “public official” and “public employee”). For one year after leaving public service, former public officials and former public employees, whether or not they were compensated for their service, are prohibited from representing any person, including themselves, for promised or actual compensation on any matter before the governmental body with which they have been associated. *See* 65 Pa. C.S. § 1103(g). This post-service restriction prohibits personal appearances before and negotiations with a former governmental body as well as submitting contract proposals that are signed by or contain the name of a former public official or employee. *See, e.g.,* State Ethics Commission Advice of Counsel No. 10-553 at 3 (describing broad scope of behavior qualifying as representation); State Ethics Commission Advice of Counsel No. 10-604 at 4 (same).

3. Determination under Established Policy

Question: “Should there be a distinction between transactions which involve some discretionary decision (selection of vendor when there is more than one submission for a contract; selection of purchaser when there are multiple bids; request for reduction in

² Based on the facts provided, although many of the transactions in which the Land Bank and its board and staff members engage are transactions involving the City, some Land Bank transactions will not involve the City. For this reason, Ethics Code restrictions that utilize the term “transactions involving the City” must be read to include transactions involving the City or the Land Bank for the purpose of applying these provisions to Land Bank board and staff members. “Transactions involving the City or the Land Bank” include any proceeding, application, submission, request for a ruling, or other determination, contract, lease, claim, case, award, decision, decree, judgment or legislation including ordinances and resolutions or other particular matter which the City officer or employee in question believes, or has reason to believe (a) is or will be the subject of City or Land Bank action; or (b) is one to which the City or Land Bank is or will be a party; or (c) is one in which the City or Land Bank has a direct proprietary interest. This shall not include routine applications or requests for routine information or other matters that are of a ministerial nature and do not require the exercise of discretion on the part of any City officer or employee. *See* Code § 20-601(27) (defining “Transactions Involving the City”).

price of property) and those that follow the literal rules of an established policy, *e.g.*, sideyard sale consistent with the Land Disposition Policy?”

Response: For purposes of the Ethics Code conflict of interest provision, a distinction would generally not be made between determining the application of an established policy and engaging in a discretionary decision. This is because determining the application of an established policy ordinarily involves engaging in a discretionary decision.

The Ethics Code conflict of interest restriction requires an official to disqualify himself or herself from taking official action and to follow a public disclosure process if he or she is financially interested in official action that will be taken by himself or herself or by a board or body of which he or she is a member. *See* Code § 20-607(a); 20-608. Specifically, the Code conflict of interest provision prohibits a Land Bank board member or staff member from taking official action when (a) the board member or staff member has a personal financial interest in the action; or (b) a family member,³ a for-profit business of which the board member or staff member is a member, or a fellow member of such business has a financial interest in the action. *See* Code § 20-607; Board Opinion 2013-005 at 4. Official action is any act or omission taken by an officer or employee in his or her official capacity that requires discretion and is not ministerial in nature. Code § 20-601(17).

A Land Bank board or staff member’s evaluation of whether an application or request complies with the rules and requirements of an established Land Bank policy would not be considered ministerial in nature and would qualify as official action. This is because it is an evaluation in which the Land Bank board or staff member has discretion to determine that requirements are met or are not met. It follows that Code Section 20-607 prohibits a Land Bank board or staff member from evaluating compliance with an established policy in matters in which he or she has a conflict of interest. For instance, a Land Bank board or staff member is prohibited from participating in the consideration of his or her sibling’s application to the Land Bank to purchase a sideyard and is prohibited from being involved in the determination of whether selling land to the sibling would be consistent with Land Bank policy.

³ For Ethics Code conflict of interest purposes, a family member includes a parent, spouse, life partner, child, brother, sister or like relative-in-law. Code § 20-601(8).

The State Ethics Commission has similarly determined that under the State Ethics Act, the analysis of whether a submission, request, or other application conforms to an established policy is discretionary action that constitutes use of the authority of office that can give rise to a conflict of interest. *See, e.g., In re Gary Lucas*, State Ethics Comm'n Order No. 1546, Dec. 15, 2009 (mere act of signing an agreement that had already been approved by City Council was discretionary and supported a conflict of interest violation); *Snyder v. State Ethics Comm'n*, 686 A.2d 843 (1996) (checking whether a final plan conformed to a preliminary plan involved discretion and supported a conflict of interest violation). Courts have upheld the State Ethics Commission determinations on this issue. *G.L. v. State Ethics Comm'n*, 17 A.3d 445 (2011) (upholding State Ethics Commission Order No. 1546).

4. Disclosure and Disqualification Letters

Question: “Can there be a ‘blanket’ Disqualification Letter? That is, if a Land Bank Board Member provides a letter on one transaction disclosing his/her conflict with, *e.g.*, a related organization, must he/she provide a similar letter for every other transaction with that organization?”

Response: If a single conflict disclosure and disqualification letter filed by a Land Bank board member provides that he or she will not take official action in any future Land Bank matters involving an organization that gives rise to a conflict for the board member, then the board member is not required to file subsequent disclosure and disqualification letters when new matters involving that organization arise.

Under the Ethics Code, officials with a conflict of interest must not only abstain from taking official action in matters in which they have a conflict, but they must also follow procedures mandated by Code Section 20-608 for public disclosure of the conflict and disqualification from related matters.⁴ *See* Code § 20-608. Different disclosure and disqualification procedures are required depending on whether a conflict is related to legislation or to another type of matter. *Compare* Code § 20-608(1)(a), (b) *with* Code §

⁴ Note that in addition to the Ethics Code conflict of interest provision at Code Section 20-607, the Ethics Code representation restriction found at Code Section 20-602(5) also requires the filing of a disclosure and disqualification letter as set forth in Code Section 20-608. In the representation context, a Land Bank board or staff member who is a member of a for-profit organization is required to file a letter and refrain from taking official action if a fellow member of the organization is representing a person as an agent or attorney in a matter in which the Land Bank board or staff member has responsibility. *See* Code § 20-602(5).

20-608(1)(c). Prior to any Land Bank action on a matter not involving legislation in which a Land Bank board member has a conflict of interest, the board member must file a letter that makes public the nature and extent of the financial interest and states he or she is disqualified from taking official action on the relevant matter or matters. Code § 20-608(1)(c); *see also* Board Opinion 2012-001 at 6-7. The disclosure and disqualification letter should: (1) identify the official's name, position, and duties relevant to the conflict; (2) describe the financial interest and relationships that give rise to a conflict; and (3) include a statement that the official intends to be disqualified from taking official action in the relevant matter or matters. *See* Code § 20-608(1)(c); General Counsel Opinion 2012-515 at 5-6. The letter is required to be sent by certified or registered mail to three recipients: the Land Bank's Executive Director, the Board of Ethics (c/o its General Counsel), and the City Department of Records, which maintains a public record of such letters. *See* Code § 20-608(1)(c); Board Opinion 2012-001 at 6-7.

A Land Bank board member may file a single such disclosure and disqualification letter that provides that the board member will not take official action with respect to an organization of which he or she is a member in any future Land Bank matters. The Land Bank board member must abide by the disqualification stated in the letter and must not take official action with respect to any Land Bank matters in which the organization has a financial interest. Participation is prohibited not only in final decisions but also in any preliminary discussions, review, or action on a matter. *See* Board Opinion 2012-001 at 6.

By way of example, if a Land Bank board member files a single conflict disclosure and disqualification letter regarding a particular business of which the Land Bank board member is a co-owner stating that the Land Bank board member will not take official action with respect to the business in any future Land Bank matters, then the board member is not required to file subsequent disclosure and disqualification letters when new Land Bank matters involving the business arise. If a long period of time has passed since the Land Bank board member filed the single disclosure and disqualification letter relating to the business, then it may be helpful as a practical matter for the board member to file a new disclosure and disqualification letter to provide more timely notice of the conflict of interest to colleagues.

By contrast, the result is different if the board member's initial disclosure and disqualification letter provided that the board member was disqualifying himself or herself from official action in specific anticipated or pending matters that did not include the new transaction. In this case, a Land Bank board member would need to file a new conflict disclosure and disqualification letter for a new Land Bank transaction involving

an organization giving rise to a conflict. For example, if a Land Bank board member's initial conflict disclosure and disqualification letter stated that she was disqualifying herself from discussing and voting upon a particular land sale to a business in which she is a co-owner, then she would be required to file a second letter disclosing a conflict and disqualifying herself from taking official action on a lease application filed with the Land Bank a few months later by that business.

The Board notes that the Land Bank board has adopted a Public Disclosure and Disqualification Procedure for Conflict Issues for Land Bank board members. *See* Exhibit B to Exhibit 1. If Land Bank board members follow this procedure, they will be in compliance with the requirements of the Ethics Code conflict of interest provisions found at Code Sections 20-607 and 20-608. This Opinion does not address whether a single disclosure and disqualification letter would comport with the Land Bank's own procedure, as that is not within the Board's jurisdiction.

5. Representation before the Land Bank

Question: What are "[t]he obligations of a Land Bank Board Member who works for City Council when his/her Councilperson recommends the acquisition of specific property or must approve the conveyance of a property to a specific party[?]" By way of example:

John is a Land Bank Board member and works for City Council Member Jane. John is an attorney but is not acting in his legal capacity as a Council staffer. The Councilwoman, through her staff, has asked the Land Bank to acquire a particular property through tax sale so that the property can be conveyed to support a project within her Council District. As part of Councilwoman Jane's staff, John interacts with the Land Bank and assists Jane with her request to the Land Bank by, among other things, acting as Jane's representative in her request to the Land Bank. This is part of John's duties as a Council staffer.

The Land Bank subsequently acquires the specified property through tax sale. The Land Bank Board has given the Executive Director of the Land Bank the authority to acquire property for all City agencies, but the Executive Director must still seek approval from the Land Bank Board to

acquire property through tax foreclosure. John as a Land Bank Board member would vote on whether to approve the acquisition.

The Land Bank Board is then ready to consider the sale of the property to the developer of the project and the Land Bank seeks and obtains a Council resolution authorizing that transfer. The Councilwoman introduces and votes in favor of that resolution. The Land Bank Board is then asked to take official action to approve the sale of the property to that developer. Does John have a conflict as a Land Bank Board member in this scenario?”

Response: Under the hypothetical facts provided, this Land Bank board member who works for a City Councilmember may not represent the Councilmember as an agent or attorney in transactions involving the Land Bank, but the Land Bank board member is permitted to take official action as a Land Bank board member on Land Bank transactions that involve the Councilmember.

The representation restriction in Code Section 20-602(2) applies to prohibit the situation presented in the hypothetical in which a single individual – the Land Bank board member – represents an outside interest – the Councilmember – before the Land Bank and also takes action as a Land Bank board member on the matter. *See* Code § 20-602(2). Specifically, the representation restriction provides that a Land Bank board member cannot represent another person directly or indirectly as an agent or attorney, whether or not for compensation, in any transaction involving the City or the Land Bank (a) in which he or she has at any time participated as a Land Bank board member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; (b) that is pending in the Land Bank during the board member’s service.⁵ *See id.*; Board Opinion 2014-004 at 6 (representation as an agent involves acting with authority on behalf of and in the best interests of a person with respect to a third party). While the representation restriction contains a number of exceptions, none apply in the hypothetical situation presented, and this Land Bank board member would be prohibited from assisting the Councilmember by representing the Councilmember in the Councilmember’s request to the Land Bank that property be acquired or sold in a certain manner. *See* Code § 20-602(1), (3)-(5).

⁵ Full-time, compensated Land Bank staff members are subject to a broader prohibition of representing another person directly or indirectly as an agent or attorney, whether or not for compensation, in any transaction involving the City or the Land Bank. *See* Code § 20-602(1)(a).

Although this Land Bank board member is prohibited from representing the Councilmember in transactions involving the Land Bank while he or she serves as a Land Bank board member, the Land Bank board member is permitted to take official action as a Land Bank board member on matters involving requests by the Councilmember. The City Code conflict of interest provision at Section 20-607 would not prohibit this Land Bank board member from participating as a Land Bank board member on Land Bank decisions to acquire or to sell the property as requested by the Councilmember. The Code conflict of interest provision prohibits a Land Bank board member from taking official action when (a) the board member has a personal financial interest in the action; or (b) a family member, a for-profit business of which the board member is a member, or a fellow member of such business has a financial interest in the action. *See* Code § 20-607; Board Opinion 2013-005 at 4.

Here, the Land Bank board member would not have a personal financial interest in these Land Bank decisions and votes because his or her compensation for serving as a member of the Councilmember's staff and the ability of the Councilmember's Office to employ the Land Bank board member would not be affected. *See* Board Opinion 2012-001 at 6 (conflict based on personal financial interest existed because requestor's compensation from outside employer and outside employer's ability to employ requestor would be affected); Board Opinion 2010-002 at 6 (no conflict in taking official action with respect to outside employer because requestor's salary from outside employer would remain the same regardless of the requestor's official action). In short, if a financial interest is not held by this Land Bank board member, the board member's family members, or any of the board member's colleagues in a for-profit business, then the Land Bank board member does not have a conflict of interest under the Ethics Code, and this board member may participate as a Land Bank board member in taking official action on Land Bank matters in which the Councilmember has made a request.

6. Membership in Outside Organizations

Question: What is “[t]he duty of Land Bank Board Members who are also City officials or Board Members of a related agency (such as PRA or PHDC) when considering agreements or transactions between the Land Bank and their other organization[?]”

Response: A Land Bank board member who is a board member or employee of a related agency may not represent that agency or organization as an agent or attorney in transactions involving the Land Bank, but under the Ethics Code, the Land Bank board

member is generally permitted to take official action in matters that involve the related agency or organization.

Under the representation restriction of the Ethics Code, a Land Bank board member cannot represent another person directly or indirectly as an agent or attorney, whether or not for compensation, in any transaction involving the City or the Land Bank (a) in which he or she has at any time participated through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or (b) that is pending in the Land Bank during the board member's service. *See* Code § 20-602(2). This means that a Land Bank board member who is also an employee of a government agency or a board member of a non-profit organization that is engaging in a transaction involving the Land Bank is prohibited from representing the agency or organization in the transaction involving the Land Bank. *See id.* For instance, a Land Bank board member who is also a board member of the Philadelphia Redevelopment Authority ("PRA") would be prohibited from representing the PRA in a transaction involving the Land Bank, including in negotiations regarding an agreement between the PRA and the Land Bank.

Although a Land Bank board member is prohibited from representing an outside entity with which the board member is affiliated in transactions involving the Land Bank, under the City Code conflict of interest provision, the board member is generally permitted to take official action as a Land Bank board member on matters that involve a government agency employer or a non-profit organization of which he or she is a board member. This assumes that no financial interest is held by (1) the Land Bank board member, such that the board member's compensation or continued employment would be affected; (2) a family member of the Land Bank board member; (3) a for-profit business of which the Land Bank board member is a member; or (4) a fellow member of such business. *See* Code § 20-607; *supra* Question 5 and citations. For example, a Land Bank board member who is also a board member of the PRA would be permitted under the Ethics Code to take official action as a Land Bank board member on matters that involve the PRA, including voting on an agreement between the PRA and the Land Bank.

Note that a conflict of interest would generally arise under the State Ethics Act with respect to either a non-profit entity or a for-profit entity with which the Land Bank board member is associated as an employee or as a member of the board of directors. The State Ethics Act conflict of interest provision prohibits a public official or public employee from using the authority of his or her office or confidential information received through holding public office for the private pecuniary benefit of himself or

herself, immediate family members⁶ and businesses with which the public official or employee is associated. *See* 65 Pa. C.S. §§ 1102, 1103(a). A public official or public employee is associated with a business for purposes of the State Ethics Act if the official or a member of the official’s immediate family is a director, officer, owner or employee, or has a financial interest⁷ in the business. *See* 65 Pa. C.S. § 1102. “Business” under the Act includes corporations, partnerships, associations, organizations, sole proprietorships, and other entities, whether organized for profit or not-for-profit. *See id.*; *Rendell v. State Ethics Comm’n*, 983 A.2d 708, 716-17 (Pa. 2009) (“[W]e ultimately conclude that the term ‘business,’ as defined by Section 1102 of the Ethics Act, should be interpreted to include non-profit entities”); State Ethics Commission Advice of Counsel 12-513 at 3. As a result, a State Ethics Act conflict of interest can arise based on an official’s use of the authority of his or her office for the pecuniary benefit of a non-profit entity or a for-profit entity for which he or she is a board member or employee.

* * * * *

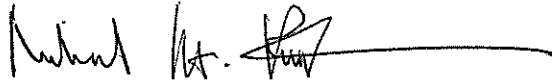
Thank you for your concern about compliance with the City ethics laws and for seeking advice on behalf of the Land Bank. This Opinion is predicated on the information you have provided as stated here. Application of ethics laws is fact-specific. In several instances the questions you have posed are general, and therefore the accompanying responses are necessarily general. If members of the Land Bank board or staff have questions about specific situations, they should ask for specific advice on the application of the City ethics laws to those particular facts. Additionally, although this Opinion identifies State Ethics Act provisions that may apply, it is recommended that you seek State Ethics Act guidance from the State Ethics Commission on the application of the State Ethics Act to Land Bank board members and staff members.

⁶ Under the State Ethics Act, “immediate family” includes a parent, spouse, child, brother or sister. 65 Pa. C.S. § 1102.

⁷ Under the State Ethics Act, “financial interest” is defined as “[a]ny financial interest in a legal entity engaged in business for profit which comprises more than 5% of the equity of the business or more than 5% of the assets of the economic interest in indebtedness.” 65 Pa. C.S. § 1102.

Since you requested a public opinion, this original Opinion will be made public.
Please let Board staff know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS

A handwritten signature in black ink, appearing to read "Michael H. Reed", followed by a long horizontal line extending to the right.

Michael H. Reed, Esq., Chair
Judge Phyllis W. Beck, (Ret.), Vice-Chair
Sanjuanita González, Esq., Member
Brian J. McCormick, Jr., Esq., Member
JoAnne A. Epps, Esq., Member

Exhibit 1



1234 Market St., 17th Floor, Philadelphia PA 19107
philadelphialandbank.org

March 12, 2016

City of Philadelphia
Board of Ethics
One Parkway Building
1515 Arch Street, 18th Floor
Philadelphia, PA 19102-1504

Attention: Maya Nayak
General Counsel

Dear Ms. Nayak:

The Philadelphia Land Bank requests a Public Advisory Opinion from the Board of Ethics regarding the application of City Code Chapters 20-600 and 20-1200 to the Land Bank, its board members and staff.

The Land Bank is a new governmental entity with the mission of returning vacant and tax delinquent property to productive reuse. The purpose of the Land Bank is to consolidate land and staff in one place to support vacant property acquisition and distribution in Philadelphia. As a public body and a body corporate and politic,¹ the Land Bank exercises public powers of the Commonwealth necessary or appropriate to carry out its powers. The Land Bank is not a state or a City agency, nor is the Land Bank a non-profit or for-profit entity. The Land Bank displays many characteristics associated with a City agency. For instance, Land Bank staff utilizes phila.gov email addresses, is supported by the City's IT network, and is by contract part of the City's pension plan.

Among other actions, the Land Bank is able to acquire tax-delinquent properties through tax foreclosure, clear the title to those properties (with the consent of the City of Philadelphia), consolidate properties owned by multiple public agencies into single ownership, and thereby assist in the assemblage and disposition of land. The Land Bank will provide a single disposition process for most of the publicly-owned vacant properties in Philadelphia. The Land Bank will become

¹ Generally, a "body corporate and politic" is a public corporation invested with the powers and duties of the government and created by the General Assembly for certain public and political purposes to carry out government functions. Its powers are conferred by State statute and are exercised by its board. A body corporate is a legal entity, and, as such, it can buy and hold property, sue and be sued, and enter into contracts.



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responsible for accepting all requests for the acquisition of publicly owned property which is available for sale and to process those requests in coordination with other land holding agencies.

The Land Bank also identifies market conditions across the City, identifies priority acquisition areas, defines annual targets against which to measure its progress and will make available to the public an inventory of vacant and tax delinquent properties.

Legislation creating the Land Bank was signed by Mayor Nutter on December 18, 2013 and became effective immediately. Philadelphia Code Chapter 16-700² describes the structure and responsibilities of the Land Bank. The Land Bank is governed by a board of directors, comprised of eleven members: five board members are appointed by the Mayor; five board members are appointed by majority vote of all the members of City Council; and one board member is appointed by majority vote of the other board members. All Land Bank Board members serve terms concurrent with their appointing authority, serve at the pleasure of their appointing authority, and continue to serve until their successors have been appointed. Thus, after every general election, there may be turnover in board members. Any individual or organization may submit recommendations for Land Bank Board membership to be considered in making appointments, but all Land Bank Board members must meet certain qualifications. For example, Land Bank Board members shall include individuals with expertise in relevant areas, including but not limited to planning, real estate development, open space, and architecture, and shall live or have a primary office in the City of Philadelphia. The Code further provides that at least four members of the Land Bank Board must be employees, members, or board members of nonprofit or advocacy organizations working in the field of housing or community development, or of civic associations, with each appointing authority to appoint two such members. These Land Bank Board members shall have particular knowledge of conditions and needs in neighborhoods with significant rates of vacant and/or publicly-owned

² In 2012, Pennsylvania passed legislation enabling municipalities such as the City of Philadelphia to create the Land Bank. 68 Pa. C.S. §§ 2101, *et seq.* The Land Bank was created by ordinance pursuant to this state law creating its framework.



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properties. Land Bank Board members are not compensated for their service. Some current Land Bank Board members are City employees.

The makeup of staff for the Land Bank is somewhat complicated. Under its bylaws, the Land Bank may engage through a management agreement an executive director, counsel and legal staff, technical experts and other individuals and may approve the qualifications, compensation and benefits of those performing such services for the Land Bank. Such individuals shall be deemed to be staff of the Land Bank ("Land Bank staff"). See Land Bank Bylaws § 206, attached as Exhibit A. No Land Bank staff, however, are hired by the Land Bank. The Land Bank contracts with the City to provide certain administrative support and services.

The Land Bank is primarily managed by staff of the Philadelphia Housing Development Corporation³ (PHDC) pursuant to a management contract. Presently, Land Bank staff is composed of eleven PHDC staff on a full time basis and one employee of the Philadelphia Redevelopment Authority⁴ (PRA). If other staff members from PRA are assigned or transferred to work for the Land Bank, they will remain PRA employees while performing Land Bank work. If assigned or transferred staff subsequently terminate employment with PRA, the Land Bank has the authority to

³ The Philadelphia Housing Development Corporation is a non-profit corporation which provides housing services to Philadelphia's low- and moderate-income households. PHDC enables owners to remain living safely in their homes through the Basic Systems Repair Program; offers both owners and tenants energy-efficiency improvements through the Weatherization Assistance Program; and helps physically disabled persons live more independently in their houses or apartments through the Adaptive Modifications Program.

⁴ The Philadelphia Redevelopment Authority is a public body and a body corporate and politic created, organized and existing in accordance with the provisions of the Urban Redevelopment Law of 1945, 35 P.S. §§ 1701, et seq.. It focuses on planning and developing balanced mixed-use communities to create thriving, well-served neighborhoods. Its responsibilities include project development and financing, as well as land acquisition, assemblage and disposition.



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hire replacement staff as PHDC employees. Recently, the City Office of Housing and Community Development⁵ (OHCD) transferred to the Land Bank those staff members who support the work of the Vacant Property Review Committee⁶. Those staff members are now PHDC employees (included in the eleven full time staff identified above), and the VPRC program will be managed by Land Bank staff.

The Land Bank Board has ultimate authority over all staff, contracts, and property transactions of the Land Bank. The Land Bank has entered and will continue to enter into various contracts and agreements with governmental and private entities, which will be approved by the Board and executed by Land Bank staff. It is not anticipated that board members, in their individual capacities, or staff will enter into any contracts or agreements with the Land Bank.

Code Chapter 16-700 also identifies ethics provisions that apply to the Land Bank. Code Section 16-709(2) provides in relevant part that “[t]he Land Bank shall also be governed by Chapter

⁵ The Office of Housing and Community Development is the department within the City of Philadelphia responsible for policy making and planning related to housing and community development activities for the City of Philadelphia. OHCD is also responsible for the organization and administration of the housing budget. OHCD staff administers contracts with public agencies such as the Philadelphia Redevelopment Authority and the Philadelphia Housing Development Corp. , as well as with subrecipient nonprofit organizations that conduct planning activities and provide services in support of activities funded by the City.

⁶ Section 16-404 of the Philadelphia provides that the Vacant Property Review Committee is composed of the executive heads or their designees of several City departments and commissions with jurisdiction over land use, development, planning, revenue, permits and similar issues, as well as executive heads or their designees of certain corporations and authorities. The Vacant Property Review Committee determines which City-owned surplus properties may be conveyed to new owners, at what price and with what conditions or restrictions.



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20-600 (Philadelphia's 'Standards of Conduct and Ethics') and Chapter 20-1200 ('Lobbying')." State law further provides that Land Bank Board members and employees are subject to the State Adverse Interest Act and State Ethics Act. 68 Pa. C.S. § 2115; *see also* Code § 16-709(2).

The Land Bank Board has already approved a "Public Disclosure and Disqualification Procedure for Conflict Issues" outlining the procedure for Land Bank Board members to follow should any of three issues arise: 1) an adverse interest as defined in the State Adverse Interest Act; 2) a conflict of interest as defined in the State Ethics Act; or 3) a conflict of interest or representation involving a business colleague as prohibited by Chapter 20-600. This Disclosure and Disqualification Procedure is attached to this request as Exhibit B.

The Land Bank requests your advice on the following matters:

1. The obligations of a Land Bank Board Member who works for City Council when his/her Councilperson recommends the acquisition of specific property or must approve the conveyance of a property to a specific party. By way of example:

John is a Land Bank Board member and works for City Council Member Jane. John is an attorney but is not acting in his legal capacity as a Council staffer. The Councilwoman, through her staff, has asked the Land Bank to acquire a particular property through tax sale so that the property can be conveyed to support a project within her Council District. As part of Councilwoman Jane's staff, John interacts with the Land Bank and assists Jane with her request to the Land Bank by, among other things, acting as Jane's representative in her request to the Land Bank. This is part of John's duties as a Council staffer.

The Land Bank subsequently acquires the specified property through tax sale. The Land Bank Board has given the Executive Director of the Land Bank the

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authority to acquire property for all City agencies, but the Executive Director must still seek approval from the Land Bank Board to acquire property through tax foreclosure. John as a Land Bank Board member would vote on whether to approve the acquisition.

The Land Bank Board is then ready to consider the sale of the property to the developer of the project and the Land Bank seeks and obtains a Council resolution authorizing that transfer. The Councilwoman introduces and votes in favor of that resolution. The Land Bank Board is then asked to take official action to approve the sale of the property to that developer. Does John have a conflict as a Land Bank Board member in this scenario?

2. The duty of Land Bank Board Members who are also City officials or Board Members of a related agency (such as PRA or PHDC) when considering agreements or transactions between the Land Bank and their other organization.
3. Post-Service Restrictions. May a Land Bank Board Member become an employee of an organization that obtained a contract with the Land Bank while that Member served on the Land Bank Board.
4. Can there be a “blanket” Disqualification Letter. That is, if a Land Bank Board Member provides a letter on one transaction disclosing his/her conflict with, *e.g.*, a related organization, must he/she provide a similar letter for every other transaction with that organization.
5. What are the obligations for a Land Bank Board Member who was employed by an organization that is now seeking to do business (*e.g.*, as vendor or purchaser) with the Land Bank (*i.e.*, a “pre-service” relationship).
6. Should there be a distinction between transactions which involve some discretionary decision (selection of vendor when there is more than one submission for a contract; selection of



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purchaser when there are multiple bids; request for reduction in price of property) and those that follow the literal rules of an established policy, *e.g.*, sideyard sale consistent with the Land Disposition Policy.

Please contact me if you require further explanation of the Land Bank itself or clarification of the matters described above.

Sincerely,

A handwritten signature in black ink, appearing to read "N. Scafidi".

Nicholas J. Scafidi
Interim Executive Director

Exhibit A

BYLAWS
OF
PHILADELPHIA LAND BANK

(A Pennsylvania Public Body Corporate and Politic
Established under Chapter 21 of Title 68 of the Pennsylvania Consolidated Statutes)

ARTICLE I
BOARD OF DIRECTORS

101. Powers; Number and Appointment

The affairs and activities of the Philadelphia Land Bank ("**Land Bank**") shall be managed and controlled and its powers exercised by a Board of Directors (the "**Board**"), except as otherwise provided by statute or these Bylaws. The Board shall be composed of eleven (11) members: five (5) members shall be appointed by the Mayor of the City of Philadelphia ("**Mayor**"); five (5) members shall be appointed by majority vote of all the members of the Council of the City of Philadelphia ("**City Council**"); and one (1) member shall be appointed by majority vote of the other members of the Board. As used in these bylaws "**the entire Board of Directors**" means the total number of Directors that the Land Bank would have if there were no vacancies.

102. Qualifications

Members shall include individuals with expertise in relevant areas, including but not limited to planning, real estate development, open space, and architecture. Members must live or have a primary office in the City of Philadelphia. At least four (4) members must be employees, members, or board members of nonprofit or advocacy organizations working in the field of housing or community development, or of civic associations, with each appointing authority to appoint two (2) such members. These members must have particular knowledge of conditions and needs in neighborhoods with significant rates of vacant and/or publicly-owned properties.

103. Term

Members appointed by the Mayor and members appointed by City Council shall serve terms concurrent with the appointing authority, and shall serve at the pleasure of their appointing authority. The member appointed by majority vote of the other members of the Board shall serve a term concurrent with the Mayor and City Council. Members shall continue to serve until their successors have been appointed.

104. Required Attendance at Meetings

A member who fails to attend three (3) consecutive meetings of the Board, without good cause, may be removed by a majority vote of the entire Board of Directors at any time up to sixty (60) days after the date of the third (3rd) missed meeting. The Board shall request the appointing authority for that member to appoint a new member or, in the event that it is the appointing authority, shall appoint a new member.

105. Resignation

Any member of the Board may resign at any time by giving written notice to the Chair or the Secretary. If such resignation is made in writing, it shall take effect on the date and time specified in the notice or, if no time is specified, the resignation shall take effect as of the date and time of its receipt by the Chair or the Secretary. Any member of the Board may resign by giving oral notice to the Board at a meeting at which a quorum (excluding the resigning member) is present. Any resignation delivered in this manner shall take effect as of the date and time of such notice. The Secretary shall promptly notify that member’s appointing authority of the resignation.

106. Removal

In addition to removal as permitted in Section 104, a member may be removed from the Board by a two-thirds vote of the entire Board of Directors held at two (2) consecutive regular Board meetings for conviction of a felony, misdemeanor involving moral turpitude or a violation of the ethical standards adopted by the Board.

A member removed under Section 104 or Section 106 shall be ineligible for reappointment to the Board unless the reappointment is confirmed unanimously by the entire Board of Directors.

107. Vacancies

Vacancies on the Board created by death, resignation, disqualification, expiration of term or through termination at the pleasure of the appointing authority shall be filled by the appointing authority in the same manner as the original appointment.

108. Delegation

The Board may delegate its authority to dispose of interests of the Land Bank in real property to staff of the Land Bank except in the following circumstances:

- (a) the proposed terms of the transaction conflict with the Land Bank's published policies or procedures;
 - (b) the transferee has a significant history of tax or water delinquencies; owning property maintained in a condition that violates The Philadelphia Code; or failing to redevelop properties previously acquired from the City of Philadelphia or other local public agencies;
 - (c) the value of the property is in excess of \$50,000 (Fifty Thousand Dollars);
- or
- (d) when otherwise required by state law.

The Board may delegate to staff, through resolutions with proper oversight, the performance of Land Bank functions and operations, including the powers and responsibilities assigned to the Officers of the Land Bank as further specified in these Bylaws.

ARTICLE II OFFICERS

201. Election

The Board shall elect from among its members a Chair, Vice Chair, Secretary, Treasurer and other officers as the Board determines at the Annual Meeting of the Board. The officers so duly elected shall hold office for one year or until their successors are appointed and qualified. Any officer may be removed from office by a majority vote of the entire Board of Directors for failure to fulfill his or her duties as an officer.

202. Chair

The Chair shall have general oversight and supervision of the activities and operations of the Land Bank. The Chair shall preside at all meetings of the Board, perform such other duties as may be assigned to him or her from time to time by the Board and perform all the duties of the office as provided by law or these Bylaws. Except for delegations of authority permitted by the Board, the Chair or Vice Chair shall sign all contracts, deeds and other instruments made by the Land Bank together with either (a) the Secretary or an Assistant Secretary or (b) the Treasurer or an Assistant Treasurer. At each meeting, the Chair shall submit such recommendations and information as the Chair may consider proper concerning the business, affairs and policies of the Land Bank.

203. Vice Chair

The Vice Chair shall perform all the duties of the Chair in the absence, death, resignation, removal or incapacity of the Chair; and in any such case, the Vice Chair shall perform such duties as are imposed on the Chair until such time as the Board shall appoint a new Chair.

204. Secretary

The Secretary shall supervise the preparation and maintenance of the books and records of the Land Bank, shall supervise the preparation of minutes and record the votes of and attendance at all meetings of the Board and its committees, shall supervise the service of all notices required to be given by the Land Bank, shall maintain a current list of the members, shall supervise the preparation and maintenance of a record of the proceedings of the Board and its committees in a journal of proceedings to be kept for such purpose, and shall perform all other duties incident to the office of Secretary and such other duties as may be assigned to him or her by the Board or the Chair. The Secretary shall ensure the safe custody of the seal of the Land Bank which may be affixed to all proceedings and resolutions of the Board and to all contracts, deeds and other instruments executed by the Land Bank.

205. Treasurer

The Treasurer shall have general supervisory authority over the financial affairs of the Land Bank. The Treasurer, or such other person as authorized by resolution of the Board, shall (i) supervise the preparation and maintenance of the annual report of the Land Bank, (ii) supervise the filing of all required financial tax returns and other regulatory reports, (iii) be responsible for the care and custody of all funds of the Land Bank and deposit the same in the name of the Land Bank in such

bank or banks as the Board may select, (iv) sign all orders and checks for the payment of money, and shall pay out and disburse such monies under the direction of the Board, (v) keep regular books, written or computerized, of accounts showing receipts and expenditures, and (vi) render to the Board, when requested, an account of the Treasurer's transactions and also of the financial condition of the Land Bank. Except as otherwise authorized by resolution of the Board, all such orders and checks shall be countersigned by the Chair or Vice Chair. The Treasurer shall perform such other duties as may be assigned to him or her by the Board or the Chair.

206. Additional Personnel

The Land Bank may engage through a management agreement an executive director, counsel and legal staff, technical experts and other individuals and may approve the qualifications, compensation and benefits of those performing such services for the Land Bank. Such individuals shall be deemed to be staff of the Land Bank.

ARTICLE III MEETINGS

301. Physical Presence

Members may only attend and participate in meetings of the Board by being physically present. Use of conference telephone or similar communications equipment, or any Internet application, which allows all persons participating in the meeting to hear each other at the same time by a member does not constitute the member's presence in person at the meeting. No member of the Board may vote by proxy. The Board may hold meetings at such locations as may be approved by the Board from time to time.

302. Public Notice

The Board shall make the agenda for each regular meeting available publicly by posting it on the Land Bank's website at least ten (10) days in advance of each meeting. Public notice of meetings involving official action and deliberations by a quorum of the Board shall be given, and such meetings shall be held, in compliance with the Sunshine Act, 65 Pa. C.S.A. §§ 701-716.

The Board shall allow for public comment on matters under deliberation at each such public meeting.

303. Annual Meeting

The Annual Meeting of the Board shall be held on such date and time designated by the Chair, but shall be held no later than January of each Fiscal Year unless otherwise extended by majority vote of the entire Board of Directors. At the Annual Meeting, the Land Bank shall establish a schedule of its regularly scheduled monthly meetings for the year which will be published on the Land Bank's website, elect officers of the Board from among themselves and such other officers as the Board may determine.

304. Regular Monthly Meetings

Regular meetings shall be held monthly at such dates and times as are adopted and scheduled at the Annual Meeting. No notice to members shall be required for any such regular meeting of the Board.

305. Special Meetings

The Chair may, when he or she deems it expedient, and shall upon the written request of a majority of the entire Board of Directors, call a Special Meeting of the Board for the purpose of transacting any business designated in the call. The call for a Special Meeting may be mailed (via electronic mail) or delivered to each member of the Board or may be mailed (via regular mail) to the business or home address of each member. Such notice must be posted to the Land Bank's website and be sent in a manner ensuring that it will be received at least 24 hours in advance of the time of the Special Meeting. The call shall state the purposes, time and place of the Special Meeting and that no business shall be considered other than as designated in the call.

306. Emergency Meetings

No public notice is necessary for Emergency Meetings of the Board called for the purpose of dealing with a real or potential emergency involving a clear and present danger to life or property.

307. Waivers of Notice

Notice of a Special or Emergency Meeting need not be given to any member who submits a signed waiver of notice either before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her.

308. Place of Meetings

The Board may hold its meetings at such place or places as the Chair may from time to time determine.

309. Quorum

At all meetings of the Board, a majority of the Board of Directors shall constitute a quorum for the purpose of transacting business. If at any meeting of the Board, there shall be less than a quorum present, a majority of those members present may adjourn the meeting from time to time until a quorum shall be present. Except as set forth below, all actions of the Board may be taken by a vote of the majority of the members present and voting at any meeting where a quorum exists. Action of the Board on the following matters must be approved by a majority of the entire Board of Directors (i) adoption, repeal or amendment of bylaws, (ii) adoption, repeal or amendment of rules governing the conduct of the Land Bank, (iii) hiring or firing of an employee or contractor of the Land Bank (this function may, by majority vote of the entire Board of Directors, be delegated by the Board to a specified officer or committee of the Land Bank), (iv) incurring of debt, (v) adoption or amendment of the annual budget, (vi) sale, lease, encumbrance or alienation of real property or personal property with a value of more than Fifty Thousand Dollars (\$50,000). A resolution relating to dissolution of the Land Bank must be approved by a vote of two-thirds of the entire Board of Directors. A member may request a recorded vote on any resolution or action of the Land

Bank.

310. Committees

The Board by resolution passed by a majority vote of the entire Board of Directors may designate one or more standing advisory and ad hoc committees, with each committee consisting of one or more members. The Board may designate one or more members as alternate members of a committee, who may replace an absent or disqualified member at a meeting of the committee. In the absence or disqualification of a member of a committee, the members thereof present at a meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member to act at the meeting in place of such absent or disqualified member. Members of advisory committees may include members and individuals who are not members.

311. Records

The minutes and resolutions of the Land Bank's public meetings shall be taken and promptly recorded in the journal of the proceedings of the Board, shall be a public record, shall be posted to the Land Bank's website, and shall be promptly made available for inspection by the public. To the extent required by law, the Land Bank shall comply with requests for records and resolutions pursuant to the Pennsylvania Right To Know Law. All books and records of the Board, its committees and the Land Bank shall be maintained at the office of the Land Bank.

ARTICLE IV CODE OF ETHICS

401. State and City Ethics' Acts

Members of the Board and employees of the Land Bank are bound by the provisions of the Pennsylvania Public Officials and Employee Ethics Act, 65 Pa. C. S. §§ 1101-1113 (the "**Ethics Act**"), the Pennsylvania State Adverse Interest Act (the "**Adverse Interest Act**"), 71 Pa. C.S. § 776.1 *et seq.*, Chapter 20-600 of the Philadelphia Code ("**Standards of Conduct and Ethics**") and Chapter 20-1200 of the Philadelphia Code ("**Lobbying**"), when applicable.

402. Supplemental Ethical Obligations

The Board shall also adopt supplemental ethical guidelines for its members and Land Bank employees and agents, including rules addressing and protecting against potential conflicts of interest.

ARTICLE V
LEGAL REPRESENTATION AND INDEMNIFICATION OF BOARD MEMBERS
AND EMPLOYEES

501. Legal Representation

(a) The Land Bank upon written request shall provide legal representation to any person who was or is a Board member, employee or agent of the Land Bank when an action is threatened or brought against such person and the acts or omissions which gave rise to the claim were within the scope of the office or duties of such person, unless or until there is a judicial determination that such acts or omissions were not within the scope of the office or duties of such person.

(b) If pursuant to Section 501(a) above, the Land Bank does not provide legal representation, the Land Bank shall reimburse any present or former Board member, employee or agent of the Land Bank for reasonable expenses of such person's legal defense if there is a judicial determination that the acts or omissions were, or that such person in good faith reasonably believed that such acts or omissions were, within the scope of such person's office or duties; provided, however, that the Land Bank need not reimburse such person when there is a judicial determination that such acts or omissions constituted a crime, fraud, malice or willful misconduct.

(c) In any instance where the Land Bank provides legal representation to a present or former Board member, employee or agent of the Land Bank, the Land Bank shall assume exclusive control of the defense. If legal counsel provided by the Land Bank determines that the interests of the Land Bank and the present or former Board member, employee or agent are conflicting, the Land Bank shall obtain the written consent of such person to continue such representation notwithstanding any such conflict or supply independent representation.

502. Indemnity

(a) The Land Bank shall indemnify any person who was or is a Board member, employee or agent of the Land Bank against all reasonable costs and expenses (including without limitation judgments, penalties, fines, amounts paid in settlement, *etc.*) incurred in any actual or threatened investigation or proceeding (whether civil, criminal, administrative or otherwise) if such person, acting within the scope of his or her office or duties as a Board member, employee, consultant or agent of the Land Bank, (i) acted in good faith, and (ii) in a manner such person believed to be in the best interest of the Land Bank, and (iii) with respect to criminal matters, without knowledge that such actions were unlawful. As to (i) and (ii) above, it shall be presumed that a person acted in good faith and in a manner such person believed to be in the best interest of the Land Bank unless and until it shall be finally adjudged that such person acted in a manner which such person knew or reasonably should have known not to be in good faith or in the best interests of the Land Bank; or the Land Bank shall determine that such person acted in a manner which such person knew or reasonably should have known not to be in good faith or in the best interests of the Land Bank, and shall have received the opinion of its independent counsel that indemnification may be improper under the circumstances. As to (iii) above, a conviction or judgment (whether after trial or based on a plea of guilty or nolo contendere or otherwise) shall not be deemed an adjudication adverse to the person to be indemnified unless it shall also be

adjudged in such conviction or judgment that such person knew or reasonably should have known such actions to be unlawful.

(b) It is the intent and obligation of the Land Bank to indemnify each former and present Board member, employee or agent in accordance with this indemnity provision to the maximum extent permitted by law. If any portion of this Article V is declared to be illegal or unenforceable, then the remaining portions of this Article V shall be interpreted so as to provide the maximum indemnity permitted by law.

(c) Any person entitled to indemnity pursuant to this Section 502 shall, as a precondition to such indemnity, inform and consult with the Land Bank prior to incurring any cost or expense for which indemnity is requested. Payment of expenses to be indemnified shall be made as and when incurred by the person to be indemnified, except as otherwise directed by the Land Bank.

503. Additional Rights

The obligations of the Land Bank as set forth in this Article V shall:

(a) be in addition to and supplemental to any rights of indemnity pursuant to any insurance contracts;

(a) be in addition to and supplemental to any right of indemnity pursuant to the "Sovereign Immunity Act", the "Political Subdivisions Tort Claims Act" or any other right to indemnity; and

(c) not constitute a waiver of any immunity which might be available to the person entitled to indemnity.

504. Obligation to Cooperate

The obligations of the Land Bank under this Article V are conditioned upon the cooperation with the Land Bank of the person benefited by the provisions of this Article V; and in the event such person shall fail or refuse to cooperate with the Land Bank as reasonably requested by the Land Bank, then the Land Bank may recover all costs and expenses expended on behalf of such person.

ARTICLE VI AMENDMENT

Except as provided in Section 703, notice of such proposed alteration, amendment or repeal of these Bylaws shall be given in writing to each member at least ten (10) days prior to the meeting at which action thereon is to be taken. Such notice must include the wording of the proposed change to the Bylaws.

**ARTICLE VII
GENERAL**

701. Seal

The Land Bank shall have a corporate seal in the form of a circle containing the name of the Land Bank, the year of its incorporation and such other details as may be approved by the Board.

702. Fiscal Year

The Fiscal Year of the Land Bank shall begin on July 1 and end on June 30 of the following year.

703. Land Bank Purposes Restrictions

Notwithstanding any other provision of these Bylaws to the contrary only such powers shall be exercised as are in furtherance of the purposes of the Land Bank and as may be exercised by a land bank organized pursuant to Chapter 21 of Title 68 of the Pennsylvania Consolidated Statutes (“**Land Bank Act**”) and Chapter 16-500 of the Philadelphia Code (the “**Land Bank Ordinance**”). Upon amendment of the Land Bank Act or the Land Bank Ordinance, any provision of these Bylaws which is rendered inconsistent with such amendment shall, without further action of the Board, be deemed void and rescinded.

Exhibit B

Philadelphia Land Bank

Public Disclosure and Disqualification Procedure for Conflict Issues

A Member of the Land Bank Board who in the discharge of the Member's official duties has one of the following "Conflict Issues":

- (1) an adverse interest as defined in the State Adverse Interest Act (71 P.S. § 776.1 *et seq.*);
- (2) a conflict of interest as defined in the Public Officials and Employees Ethics Act (65 Pa.C.S.A. § 1101 *et seq.*); **or**
- (3) a conflict of interest or representation involving a business colleague as prohibited by the City Ethics Code (Philadelphia Code §§ 20-602(5), 20-607, 20-608(c))

shall take the following actions as soon as possible and before Land Bank action occurs to make public the nature and extent of the financial interest, contract interest, or business relationship at issue:

- (a) Prepare a letter that:
 - 1) includes the Member's name and position;
 - 2) identifies the relevant matter on which the Land Bank is taking action (such as specific property being considered for transfer);
 - 3) describes the circumstances (including relevant relationships and financial interests) giving rise to the Conflict Issue;

- 4) describes the relevant duties that that would normally require the Member or the Land Bank to take official action;
 - 5) includes a statement that the Member disqualifies himself/herself from official action related to the Conflict Issue, including participating in preliminary discussions and review as well as final votes and decisions.
- (b) Cause one (1) copy of such letter to be delivered by certified mail to each of the following: the Chair of the Land Bank; the Executive Director of the Land Bank; the General Counsel of the Board of Ethics; and the Commissioner of the Department of Records.
- (c) Abstain from taking official action and remove himself/herself from the opportunity to influence in any manner the Land Bank's actions related to the Conflict Issue. This includes leaving the room while the Land Bank Board considers the matter.

The Chair of the Land Bank shall cause such letters to be read at the first public meeting after the disclosure letter has been sent and also to be attached to the meeting minutes. At subsequent meetings on which action is taken relating to the Member's Conflict Issue, the Chair shall note the Member's disclosed Conflict Issue and disqualification from related official action. The Chair shall exclude the Member from any participation, including votes, deliberations, and other official action related to the Member's Conflict Issue. When the Chair of the Land Bank is the individual filing a disclosure and disqualification letter, another officer of the Land Bank shall carry out the duties described for the Chair in this Paragraph.

The agenda for Land Bank meetings is set 10 days before the Board meeting. Upon receipt of a copy of the agenda, Members should review it for potential Conflict Issues, and if they discover any, should immediately follow this public disclosure and disqualification procedure.

In the event that a Member becomes aware of a conflict just before the Board meeting, that Member shall publicly announce his/her financial interest in the matter, state that he/she will not participate in the matter, leave the room during consideration of the matter and file the required letters within 5 days after the Board meeting.

Any Member who is unsure whether he or she has a Conflict Issue or who has questions about this procedure should contact the Land Bank's General Counsel.