



LAND BANKING DEPOSITORY AGREEMENT PROGRAM

▶ 1. Scope

These policies and procedures for a Land Banking Depository Agreement Program of the LBA have been adopted by the Board of Directors of the LBA in accordance with the provisions of the 2017 Interlocal Cooperation Agreement.

As set forth in these Policies and Procedures, the Land Banking Depository Agreement Program consists of transactions in which a grantor transfers real property to the LBA and the property is held by the LBA pending a transfer back to the original grantor, to a grantee identified in a Banking Agreement, or to a third party selected by the LBA at its discretion.

The goals of this Land Banking Depository Agreement Program include, but are not limited to, the acquisition of real property for or on behalf of a governmental entity or a not-for-profit corporation in order to:

- A Permit advance acquisition of potential development sites in anticipation of rapidly rising land prices;
- B Facilitate pre-development planning, financing, and structuring;
- C Minimize or eliminate violations of housing and building codes and public nuisances on properties to be developed for affordable housing; and,
- D Hold parcels of land for future strategic governmental purposes, such as affordable housing and open spaces and greenways.

The LBA is not required to enter into a Banking Agreement (see definition in Section 2(a) below) with any person or entity, and at all times retains full discretion and authority to decline to enter into such Agreement. These Policies and Procedures are applicable only to real property of the LBA which is acquired by the LBA in accordance with an executed Land Banking Depository Agreement and are not otherwise applicable to real property acquired by the LBA pursuant to any other agreements or procedures.

▶ 2. Definitions

As used in these Policies and Procedures the following terms shall have the definitions set forth:

- A “Banking Agreement” shall mean a written agreement between a Grantor and the LBA which identifies the Property, the length of the banking term, the potential Grantee or Grantees, the range of permissible uses of the Property following transfer by the LBA, the permitted encumbrances on the Property, the rights and duties of the parties, the responsibility of the Grantor for the Holding Costs, the possible advance funding of Holding Costs, the forms of the instruments of conveyance, and such other matters as appropriate.
- B Grantor” shall mean the party that transfers or causes to be transferred to the LBA a tract of Property pursuant to a Banking Agreement. An eligible Grantor shall be an entity described in Section 4.
- C “Grantee” shall mean the party or parties identified in a Banking Agreement as the party to whom the Property is to be transferred from the LBA. An eligible “Grantee” shall be an entity described in Section 4.
- D “Holding Costs” shall mean any and all costs, expenses, and expenditures incurred by the LBA, whether as direct disbursements, as pro rata costs, or as administrative costs, that are attributable to the ownership and maintenance of a tract of Property. The LBA shall maintain records of the monthly Holding Costs for each Property.
- E “Property” shall mean the real property and improvements (if any) located thereon identified in a Banking Agreement and transferred to the LBA pursuant to a Banking Agreement, together with all right, title and interest in appurtenances, benefits and easements related thereto.

▶ 3. Eligible Property

Property which is eligible for a Banking Agreement must either be (a) unimproved real property, (b) real property with unoccupied single or multi-family residences, (c) vacant commercial or industrial property.

- A In the event that a tract of Property contains improvements which are to be demolished or removed, such Property may qualify as eligible Property for a Banking Agreement so long as adequate and sufficient funds are placed in escrow at the time of the Banking Agreement closing so as to assure that all improvements will be demolished and removed within sixty (60) days of closing.
- B Property that is ineligible for a Banking Agreement includes all other forms of improved real property, all real property which is occupied, real property that is tax delinquent, and all real property that has been identified by the United States Environmental Protection Agency, the Environmental Protection Division of the State of Georgia or the Georgia Department of Natural Resources as containing hazardous substances and materials demonstrated by the submission of an EPA Phase 1 or 2 assessment.

▶ 4. Eligible Grantors and

Parties eligible to be a Grantor or a Grantee are governmental entities and not-for-profit corporations defined as tax-exempt entities under Section 501(c)(3) of the Internal Revenue Code. In the sole discretion of the LBA, a limited or joint partnership entity is eligible to be a Grantor or a Grantee so long as a governmental entity or not-for-profit corporation has a controlling interest in such entity, as determined by the LBA in its sole discretion.

▶ 5. Title

Unless and except to the extent expressly authorized in a Banking Agreement, Property transferred to the LBA pursuant to a Banking Agreement shall be fee simple title free and clear of all liens and encumbrances. A policy of title insurance must be issued in favor of the LBA as the insured party at the closing pursuant to the Banking Agreement containing such exceptions as are approved by the LBA.

- A Governmental liens for water and sewer, and governmental liens for nuisance abatement activities or code enforcement activities may exist as a matter of record title at the time of such closing if and only if such liens are expressly acceptable to the LBA and are subject to waiver or discharge by the governmental entity holding such liens without cost to the LBA.
- B A Deed to Secure Debt or Security Deed may encumber Property at the time of the transfer to the LBA provided that the obligations secured by such security instrument do not require monthly or periodic payment of sums by the LBA to the mortgagee. Under no circumstances will the LBA have direct liability for a mortgage pursuant to a security instrument. It is anticipated that each Banking Agreement that contemplates the transfer of Property to the LBA encumbered by a security instrument will require a separate written agreement between the mortgagee and the LBA which provides, among other things, that (1) the mortgagee expressly consents to the transfer to the LBA, (2) the mortgagee expressly subordinates its interests to covenants, conditions, and restrictions as may be required by the LBA, and (3) prior to the exercise of mortgagee rights under the security instrument, the mortgagee will request on behalf of the Grantor the re-conveyance of the Property to the Grantor and pay to the LBA the Holding Costs attributable to the Property.
- C At the time of closing pursuant to a Banking Agreement, all ad valorem taxes which are due and payable on the Property must be paid in full. An exception to this requirement of no outstanding ad valorem tax liens may be granted when the Grantor is acquiring the Property from a third party and immediately conveying the Property to the LBA pursuant to a Banking Agreement or in such other limited circumstance in the discretion of the LBA.

▶ 6. Length of Banking Term

A Banking Agreement may permit a maximum banking term of sixty (60) months for transactions in which the Grantor is a not-for-profit entity, and sixty (60) months for transactions in which the Grantor is a governmental entity. Banking Agreement terms may be extended beyond the maximum terms identified in this section on a case-by-case basis in the discretion of the LBA.

▶ 7. Transfer at Request of Grantor

A Banking Agreement shall authorize a Grantor to request a transfer of the Property by the LBA to a Grantee at any time within the banking term.

- A A conveyance by the LBA to the Grantee identified pursuant to a Banking Agreement shall occur within thirty (30) days of receipt of a written request for a transfer.
- B As a condition precedent to the transfer by the LBA, the full amount of Holding Costs incurred by the LBA attributable to the Property shall be paid to the LBA. The LBA shall provide to the Grantor in accordance with Section 10, a statement of the Holding Costs attributable to the Property.
- C At the time of the transfer by the LBA to the Grantee, the LBA shall impose such restrictions and conditions on the use and development of the property in accordance with Section 11 hereof and the applicable Banking Agreement.
- D Conveyance by the LBA to a Grantee shall be by Quitclaim Deed.

▶ 8. Transfer at Request of LBA

At any time and at all times during the term of a Banking Agreement, the LBA shall have the right, in its sole discretion, to request in writing that the Grantor or its designee accept a transfer of the Property from the LBA.

- A A transfer by the LBA pursuant to this Section 8 shall be subject to the same terms and conditions as set forth in Section 7.
- B In the event that the Grantor (or its designee) is unwilling or unable to accept a transfer of the Property from the LBA, and reimburse the LBA in full for the Holding Costs, then and in that event, the LBA shall have the right to terminate in writing the Banking Agreement and the Property shall become an asset of the LBA and subject to use, control, and disposition by the LBA in its sole discretion subject only to the provisions of the Georgia Land Bank Act, the 2017 Interlocal Cooperation Agreement, and any applicable LBA policies and procedures.

▶ 9. Banking Agreement Closing

Within a time period specified in a fully executed Banking Agreement, a closing of the transfer of the Property to the LBA shall occur. At such closing, the fully executed instrument of conveyance and other closing documents shall be delivered by the appropriate party to the appropriate parties. The appropriate documents shall be immediately recorded, and a title insurance policy shall be issued. All costs of closing shall be borne by the Grantor.

▶ 10. Holding Costs

Holding Costs shall be paid as a condition precedent to a transfer of Property from the LBA. Either the Grantor or the Grantee can request in writing at any time a statement of the Holding Costs, which statement will be provided by the LBA within fifteen (15) business days of receipt of the request. The LBA shall also have the right to request in writing that the Grantor or Grantee reimburse on written demand the LBA for Holding Costs. In the event the LBA is not timely reimbursed for its Holding Costs in response to its written request for reimbursement, the LBA may request a transfer pursuant to Section 8.

▶ 11. Public Purpose Restrictions

All Property held by the LBA and transferred by the LBA pursuant to a Banking Agreement shall be subject to covenants and conditions providing that the Property is to be used for the following goals: (a) the production or rehabilitation of housing for persons with low incomes, (b) the production or rehabilitation of housing for persons with moderate incomes, (c) community improvements, or (d) other public purposes. Each Banking Agreement will specify the range of permissible uses and the manner in which such use restriction is secured. Such restrictions and conditions may be imposed either in the form of contractual obligations, deed covenants, rights of reacquisition, or any combination thereof.

▶ 12. Execution Authority and Reporting

The Board of Directors shall have full power and authority to enter into and execute Banking Agreements having form and content consistent with these policies and procedures. The Executive Director shall summarize for the Board of Directors on a regular basis the nature and number of Banking Agreements, the aggregate Holding Costs, and all transfers to and from the LBA pursuant to Banking Agreements. Any provision of any Banking Agreement not consistent with these policies and procedures shall require the express approval of the Board of Directors.