

MARTHA'S VINEYARD LAND BANK

Chapter 736 of the Acts of 1985

as amended by
Chapter 17 of the Acts of 1987

as amended by
Chapter 673 of the Acts of 1987

as amended by
Chapter 247 of the Acts of 1993

as amended by
Chapter 78 of the Acts of 2009

SECTION 1. For the purposes of this act, the words and phrases set forth in this section shall have the following meanings: --

“Fund”, shall refer to the Martha’s Vineyard Land Bank Fund established under the provisions of section eight.

“Institutional Lender”, any bank as defined in section one of chapter one hundred and sixty-seven of the General Laws, any insurance company as defined in section one of chapter one hundred and seventy-five of the General Laws, and any mortgage company or investment company that made more than twenty mortgage loans in the calendar year preceding the year of the relevant mortgage for the purposes of subsection (*m*) of section twelve, and any national bank, federal savings and loan, federal savings bank, bank holding company, or state or federally chartered credit union.

“Land bank”, the Martha’s Vineyard Land Bank, established by section two.

“Land bank commission”, the Martha’s Vineyard land bank commission, established by section three.

“Legal representative”, with respect to any person, shall mean any other person acting pursuant to a written power-of-attorney executed by such person; provided, however, that any affidavit attesting to the true and complete purchase price of real property, submitted to the land bank commission pursuant to section ten, may also be signed on behalf of such person by an attorney admitted to practice in the commonwealth.

“Purchaser”, the transferee, grantee or recipient of any real property interests.

“Purchase price”, all consideration paid or transferred by or on behalf of a purchaser to a seller or his nominee, or for his benefit, for the transfer of any real property interest, and shall include, but not be limited to, all cash or its equivalent so paid or transferred, all cash or other property paid or transferred by or on behalf of the purchaser to discharge or reduce any obligation of the seller; the principal amount of all notes or their equivalent, or other deferred payments, given or promised to be given by or on behalf of the purchaser to the seller or his nominee; the outstanding balance of all obligations of the seller which are assumed by the purchaser or to which the real property interest transferred remains subject after the transfer, determined at the time of transfer but excluding real estate taxes and other municipal liens or assessments which are not overdue at the time of the transfer; and the fair market value at the time of transfer of any other consideration or thing of value paid or transferred by or on behalf of the purchaser, including, but not limited to, any property, goods or services paid, transferred or rendered in exchange for such real property interest.

“Real Property Interest”, any present or future legal equitable interest in or to real property, and any beneficial interest therein, including the interest of any beneficiary in a trust which holds any legal or equitable interest in real property, but shall not include any interest which is limited to any or all of the following: the dominant estate in any easement or right of way; the right to enforce any restriction; any estate at will or at sufferance, and any estate for years having a term of less than thirty years; the reversionary right, condition, or right of entry for condition broken; the interest of a mortgagee or other secured party in any mortgage or security agreement; and the interest of a stockholder in a corporation, or a partner in a partnership, unless any real property interest has been transferred to such corporation or partnership for the purpose of evading the fee imposed by section ten.

“Seller”, the transferor, grantor or immediate former owner of any real property interests.

“Time of Transfer”, of any real property interest shall mean, at the time that such transfer is legally effective as between the parties thereto, and, in any event, with respect to a transfer evidenced by an instrument recorded with the appropriate registry of deeds or filed with the assistant recorder of the appropriate registry district, not later than the time of such recording or filing.

“Town Advisory Board”, a town board created in each of the towns of Chilmark, Edgartown, Gay Head, Oak Bluffs, Tisbury and West Tisbury to assist the land bank commission in administering this act, such advisory board to consist of one representative duly appointed, either from its membership or otherwise, by each of the following town boards should they exist: conservation commission,

planning board, board of assessors, board of health, park and recreation commission, board of selectmen and water commission and in said town of Tisbury there shall be one representative duly appointed either from its membership or otherwise by the department of public works.

SECTION 2. There is hereby established a Martha's Vineyard land bank, to be administered by a land bank commission established by section three, for the purpose of acquiring and holding and managing land and interests in land of the types set forth in section five. The land bank is hereby constituted a body politic and corporate and a public instrumentality and the exercise of the powers herein conferred upon the land bank shall be deemed to be the performance of an essential governmental function.

This act shall not affect the eligibility of any member town to receive funds under the land conservation program created under section eleven of chapter one hundred and thirty-two A of the General Laws, or under any similar state program.

SECTION 3. The land bank shall be administered by a land bank commission consisting of seven persons, of whom there shall be one person who is a legal resident of each of the towns of Chilmark, Edgartown, Gay Head, Oak Bluffs, Tisbury and West Tisbury, each person to be elected to a three year term, in the same manner as other elected town officials, provided that the initial terms, drawn by lot by the initial six appointed members, shall be staggered so that two members are elected each year, following the initial election of members; and provided, further, that the county commissioners shall, respectively, appoint the initial six members, including one person who is a legal resident of each of the six towns that comprise the land bank to serve from the effective date of this act

until the first elections of the regular members at each town's regular or special town election following the effective date of this act. The secretary of environmental affairs or his designee shall be a voting member of the land bank commission. Members shall serve without compensation. The initial appointed members shall adopt temporary rules and regulations to the extent necessary to conduct business until the regular members are elected. The land bank commission shall elect a chairman and a vice chairman from among its regular members; shall elect a secretary and a treasurer who may be the same person, but who need not be members of the land bank commission; and shall adopt, after holding a public hearing and after requesting recommendations from the town advisory board of each of the six member towns that comprise the commission, rules and regulations for conducting its internal affairs and procedural guidelines for carrying out its responsibilities under this act. The land bank commission shall also adopt a management plan for managing each of its land holdings in a manner consistent with section five. In preparing a management plan for any parcel of land, the land bank commission shall use, as guidelines, the open space and master plans, if any, of the town or towns in which such parcel is located and shall request the recommendations of the town advisory board of such town or towns; and the adoption or change of any such management plan shall be subject to the approval of at least two-thirds of the members of the town advisory board of each such town or towns. Decisions of the land bank commission shall be by majority vote of those present and voting at a meeting, and no business shall be transacted at any meeting unless a majority of the town representative members is present; provided that decisions to acquire interests in land and to request state approval of any proposed disposition of an interest in any parcel of land or of any change in its use shall require the affirmative vote of at least a

majority of the town representative members of the land bank commission. The land bank commission shall keep accurate records of its meetings and actions and shall file an annual report which shall be distributed with the annual report of each member town.

SECTION 4.

The land bank commission shall, subject to the provisions of this act, have the power and authority to (a) acquire, by purchase or gift, fee simple interests, and any lesser interests, in any parcel of land situated within any of the towns that comprise the land bank commission, of the types set forth in section five, including any improvements thereon; provided, however, that the land bank commission shall, in considering any such acquisition, use as guidelines the open space and master plans, if any, of the town or towns in which such parcel is located, and provided further that any such acquisition shall require the approval of the town advisory board of any such town or towns; (b) accept gifts of funds to further the purposes of the land bank; (c) take any such interests in land by eminent domain pursuant to chapter seventy-nine of the General Laws, but only by a vote of the land bank commission in which at least four town representative members vote in favor of such taking and further, only after having been authorized to do so in each instance by a two-thirds majority vote of each town that comprises the land bank commission at its annual or special town meeting, and further, only after having first made a reasonable effort to negotiate the acquisition thereto by purchase; (d) dispose of all or any part of its interests in any parcel of land, or change the use of such parcel, but only with the approval of the town advisory board of the town or towns in which such parcel is located and with the approval of the secretary of environmental affairs and subject to the provisions of Article XCVII of the Articles of Amendment to the Constitution of the Commonwealth, to the extent applicable; (e)

incur debt, pledging the full faith and credit of each of the towns that comprise the land bank commission but only after having been authorized to do so in each instance by a two-thirds majority town meeting vote of each town; and incur debt, without such town meeting authorization, by pledging the full faith and credit of the land bank commission; (f) prepare an annual budget, which shall be subject to approval by the town advisory boards of the majority of the member towns of the land bank commission; (g) hire such staff and obtain such professional services as are necessary in order to perform its duties; (h) administer and manage its interests in any parcel of land in a manner consistent with section five and with the land management plan adopted for such parcel under section three; (i) expend funds to supplement municipal, state or federal funds for the purchase of interests in land of the types set forth in section five; and (j) adopt such regulations and procedures as it deems necessary or appropriate, subject to the provisions of this act, regarding the use and investment of its funds and the keeping of records and accounts.

SECTION 4A. Each member town is hereby authorized to appropriate money to be deposited in the fund as provided in section eight or to provide funds to repay notes of such member town issued pursuant to section four C and, when authorized by a two-thirds vote as defined in section one of chapter forty-four of the General Laws, to incur debt of such member town for such purposes in accordance with the provisions of clause (3) of section seven of said chapter forty-four.

SECTION 4B. The land bank is hereby empowered to issue its bonds and notes, including notes in anticipation of bonds, for the purpose of acquiring land and interests in land as provided in section four. The proceeds of such bonds or notes may be used to pay, in whole or in

part, acquisition costs; to provide reserves for debt service and other expenses; to pay consulting, appraisal, advisory and legal fees and costs incidental to the issuance and sale of such bonds or notes; to purchase, refund or renew bonds or notes previously issued; and to pay any other costs and expenses of the land bank necessary for the accomplishment of its purposes. Bonds or notes issued under this act shall be authorized by the land bank commission which shall have full power and authority to determine the amount, form, terms, conditions, provisions for the payment of interest and all other details thereof and to provide for their sale and issuance at such price and in such manner as the land bank commission shall determine, subject only to any limitations set forth in this act. Unless each member town shall have authorized by a two-thirds vote of a town meeting the pledging of the full faith and credit of such towns to secure an issue of bonds or notes of the land bank, all bonds or notes issued hereunder shall be payable solely from the fees and other revenues of the land bank pledged to their payment and shall not be deemed a pledge of the full faith and credit of any town in the county of Dukes County. Bonds and notes issued hereunder shall not be deemed a pledge of the full faith and credit of the county of Dukes County, the commonwealth or, except as provided in the preceding sentence in the case of the member towns, any political subdivision thereof or therein.

The land bank commission may enter into any agreements, including without limitation a loan agreement and a trust agreement, necessary to effectuate and to secure and bonds or notes issued by the land bank. Such agreements may pledge or assign, in whole or in part, the revenues and other money held or to be received by the land bank. Such agreements may contain provisions for protecting and enforcing the rights, security and remedy of the holders of such bonds or notes, including, without

limiting the generality of the foregoing, provisions defining defaults and providing for remedies in the event thereof which may include the acceleration of maturities and covenants setting forth the duties of, and limitations on, the land bank in relation to the custody, safeguarding, investment and application of money, the issuance of additional debt obligations, the use of any surplus proceeds of the borrowing, including any investment earnings thereon, and the establishment of special funds and reserves.

The pledge of any such agreement shall be valid and binding and shall be deemed continuously perfected for the purposes of the Uniform Commercial Code from the time when the pledge is made; the revenues, money, rights and proceeds so pledged and then held or thereafter acquired or received by the land bank shall immediately be subject to the lien of such pledge without any physical delivery or segregation thereof or further act; and the lien of any such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against any member town or the county of Dukes County, irrespective of whether such parties have notice thereof. No document by which a pledge is created need be filed or recorded except in the records of the land bank and no filing need be made under the Uniform Commercial Code.

The trustee with respect to any such trust agreement entered into pursuant to this section shall be a trust company or a bank having the powers of a trust company within the commonwealth. Any such trust agreement may provide that any money received thereunder may be held, deposited or invested by the trustee, notwithstanding the provisions of section eight, pending the disbursement thereof, in any deposits or investments which are lawful for the funds of savings banks and shall provide that any

officer with whom or any bank or trust company with which such money shall be deposited shall act as trustee of such money and shall hold and apply the same for the purposes hereof and thereof, subject to such regulation or limitation as this act or such trust agreement may provide.

It shall be lawful for any bank or trust company within the commonwealth to act as depository of the proceeds of bonds or notes, revenues or other money hereunder and to furnish such indemnifying bonds or to pledge such security, if any, as may be require by the land bank commission. Any trust agreement entered into pursuant to this section may set forth the rights and remedies of the holders of any bonds or notes and of the trustee and may restrict the individual right of action by any such holders. In addition to the foregoing, any such trust agreement may contain other such provisions as the land bank commission may deem reasonable and proper. All expenses incurred in carrying out the provisions of such trust agreement may be *(i)* treated as part of the cost of operation of the land bank and *(ii)* paid from the revenues or other funds pledged or assigned to the payment of the principal of and the premium, if any, and interest on the bonds or notes or from any other funds available to the land bank. In addition to other security provided herein or otherwise by law, bonds or notes issued under this section may be secured, in whole or in part, by insurance or by letters or lines of credit or other credit facilities issued to the land bank by any bank, trust company or other financial institution, within or without the commonwealth, and the land bank may pledge or assign any of its revenues as security for the reimbursement by the land bank to the issuers of such letters or lines of credit, insurance or credit facilities of any payments made hereunder.

SECTION 4C. If at any time any principal or interest is due or about to come due

on any bonds or notes of the land bank to secure which the full faith and credit of the member towns shall have been pledged and funds to pay the same are not available, the land bank commission shall certify to each town treasurer and the selectmen of each member town the amount required to meet such obligations and the town treasurers shall thereupon pay over to the land bank the amount so certified from any funds in the treasury. The amount certified to and payable by each member town shall be determined by applying to the aggregate amount so certified a fraction the numerator of which shall be the amount of revenue derived by the land bank from the fee imposed by section ten upon the transfer of real property interests in such town during the period from the commencement of operations of the land bank to and including the last day of the month preceding the month in which such certification is made, and the denominator of which shall be the total amount of revenue derived from such fee upon the transfer of real property interests during such period in all the members towns whose full faith and credit has been pledged to secure such obligations. For the purpose of providing or restoring to the treasury the sums so paid over to the land bank, each town treasurer, with the approval of the selectmen, is authorized to incur debt outside the town's debt limit and issue notes therefor for a period not exceeding two years and to renew or refund the same from time to time until the town shall have received from the land bank sufficient funds to repay such notes and the interest thereon in full. Whenever the towns shall have been required to pay over any sums of money to the land bank under this section, the land bank shall be precluded from acquiring any additional property, or issuing any of its bonds and notes for purposes other than repaying the towns, until the land bank shall have repaid the towns in full for all sums paid to the land bank hereunder, including interest on any notes issued for such purpose, unless the towns shall have

appropriated sufficient funds for such purpose at a town meeting or meetings.

SECTION 4D. Bonds and notes issued under the provisions of this act are hereby made securities in which all public officers and public bodies of the commonwealth and its political subdivisions, all insurance companies, trust companies in their commercial departments, savings banks, cooperative banks, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds and notes are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the commonwealth for any purpose for which the deposit of bonds or obligations of the commonwealth is now or may hereafter be authorized by law.

SECTION 4E. Notwithstanding any of the provisions of this act or any recitals in any bonds or notes issued under this act, all such bonds and notes shall be deemed to be investment securities under the Uniform Commercial Code.

SECTION 4F. Bonds and notes may be issued under this act without obtaining the consent of any department, division, commission, board, bureau or agency of any member town or of the county of Dukes County, except that the full faith and credit of any member town shall not be pledged for the payment of such bonds or notes unless such pledge shall have been authorized by the appropriate two-thirds vote or votes as provided in section four, and without any other proceedings or the happening of any other conditions or things which are specifically required therefor by this act. The validity of and security for any bonds and notes issued by the land bank shall

not be affected by the existence or non-existence of any such consent or other proceedings, conditions or things.

SECTION 4G. The land bank and all its revenues, income and real and personal property used solely by the land bank in furtherance of its public purposes shall be exempt from taxation and from betterments and special assessments and the land bank shall not be required to pay any tax, excise or assessment to or for the commonwealth or any of its political subdivisions. Bonds and notes issued by the land bank, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be exempt from taxation within the commonwealth. The provisions of section twenty-seven C of chapter twenty-nine of General Laws shall not apply to this section or any other provisions of this chapter.

SECTION 5. Interests in land to be acquired shall be situated in a member town and may consist of any of the following: (a) land to protect existing and future well fields, aquifers and recharge areas; (b) agricultural lands; (c) forest land; (d) fresh and salt water marshes and other wetlands; (e) ocean and pond frontage, beaches, dunes and adjoining backlands, to protect their natural and scenic resources; (f) land to protect scenic vistas; (g) land for nature or wildlife preserves; (h) easements for trails and for publicly owned lands; and (i) land for passive recreational use.

SECTION 6. The land bank commission shall retain any real property interest acquired pursuant to this act predominantly in its natural, scenic or open condition, and shall not restrict access to any property interest on the basis of residency or domicile. Notwithstanding the foregoing, the land bank commission may make improvements to any land held for passive recreational use that are not inconsistent with such use. With respect to any such real property interest, the

land bank commission shall not permit any of the following without the approval of the town advisory board of the town or towns in which such real property is located and without the approval of the secretary of environmental affairs: (a) construction or placing of buildings, roads, signs, billboards, or other advertising utilities or other structures on or above the surface, (b) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials, (c) removal or destruction of trees, shrubs or other vegetation, (d) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface, (e) surface use except for purposes permitting the land or water area to remain predominantly in its natural condition, (f) activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or (g) other acts or uses detrimental to such retention of land or water areas. In determining whether or not to approve a request from the land bank commission to use or improve any real property interest acquired by the land bank commission in a manner otherwise prohibited by this section, the secretary of environmental affairs shall consider whether such request is in the interest of conservation and any national, state, regional or local program in furtherance thereof, and also any public, state, regional or local comprehensive land use or development plan affecting the land, and any known proposal by a governmental body for use of the land.

SECTION 7.

The land bank commission shall file annually with the secretary of environmental affairs a report of its activities during the year preceding such filing. The report shall list all real property interests currently held by the land bank commission, including a description of the use thereof, and shall include all acquisitions, improvements and dispositions of real property interests by the land bank

commission during such year. The report shall also include a current plan for its future operations which shall be, as far as possible, consistent with the open space and master plans of each of the towns and with any regional planning in the area. The secretary of environmental affairs may require other information which said secretary deems important.

SECTION 8. The land bank commission shall meet its financial obligations by drawing upon a fund, to be set up as a revolving or sinking account within the treasury of the county of Dukes County. Deposits into the fund shall include (a) funds appropriated, borrowed or transferred to be deposited into the fund by vote of the county commissioners of the county of Dukes County or of town meetings of the towns that comprise the land bank commission; (b) voluntary contributions of money and other liquid assets to the fund; (c) revenues from fees imposed upon the transfer or real property interests as set forth in section ten occurring after the effective date of this act as set forth in section fifteen; (d) proceeds from disposal of real property or interests. Grants or gifts of money or other assets to the land bank shall be expended only for the purposes of the grant or gift and subject to any restrictions or limitations imposed thereon by the grantor or donor thereof. All expenses lawfully incurred by the land bank commission in carrying out the provisions of this act shall be evidenced by proper vouchers and shall be paid by the county treasurer of said county only upon submission of warrants duly approved by the land bank commission. The county treasurer of said county shall prudently invest available assets of the fund in accordance with the regulations and procedures adopted by the land bank commission pursuant to clause (j) of section four, and all income thereon shall accrue to the fund.

SECTION 8A. An account shall be established by the land bank commission for each member town of the land bank. The county treasurer shall administer all transactions for the individual town accounts. Of the revenues collected under this act, fifty per cent shall remain in the fund, to be directly administered by the land bank commission in accordance with the provisions of this act. The remaining fifty per cent of the revenues collected shall be transferred to the individual town accounts in proportion to the amount of collected land bank revenues derived from transfer of any real property interest in any real property within each respective town. Money in the individual town account of each member town may be expended by the land bank commission, subject to the approval of at least a majority of the members of the town advisory board of such town, for the purchase of land or interests in land permitted by this act, within or outside the borders of such town, or for any other purpose permitted by this act, including the payment of debt service on bonds or notes issued by the land bank hereunder. With the approval of at least two-thirds of the members of the town advisory board of any member town, an agreement entered into under section four B may pledge or assign, in whole or in part, the revenues held in, or to be received for the account of, the individual town account of such town to secure any bonds or notes issued by the land bank for a purpose so approved by the town advisory board.

SECTION 9. The land bank commission shall keep a full and accurate account of its action including a record as to whom, from or to whom, and on what account money has been paid or received relative to this act, and as to when, from and to whom and for what consideration real property interests have been acquired, improved or disposed of. Said records or accounts shall be subject to examination by the director of accounts or his agent pursuant to section forty-five of

chapter thirty-five of the General Laws.

Said county treasurer shall keep a full and accurate account stating when, from or to whom, and on what account money has been paid or received relative to the activities of the land bank commission and the land bank. Said account shall be subject to examination by the director of accounts or his agent pursuant to section forty-four of chapter thirty-five of the General Laws.

SECTION 10. There is hereby imposed a fee equal to two per cent of the purchase price upon the transfer of any real property interest in any real property situated in a member town or towns. The fee percentage may be reduced by a two-thirds vote in favor of such reduction at the annual town meetings of a majority of the member towns in a single calendar year; provided, however, that no reduction in the fee percentage shall take effect until all bonds and notes of the land bank issued prior thereto pursuant to section four B shall have been paid in full. Said fee shall be the liability of the purchaser of such real property interest, and any agreement between the purchaser and the seller or any other person with reference to the allocation of the responsibility for bearing said fee shall not affect such liability of the purchaser. Such fee shall be paid to the land bank commission or its designee, and shall be accompanied by a copy of the deed or other instrument evidencing such transfer, if any, and an affidavit signed under oath or under the pains and penalties of perjury by the purchaser or his legal representative, attesting to the true and complete purchase price and the basis, if any, upon which the transfer is claimed to be exempt in whole or in part from the fee imposed hereby. The land bank commission, or its designee, shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has been paid or that the transfer is exempt from the fee, stating the basis for

the exemption. The register of deeds for the county of Dukes County, and the assistant recorder for the registry district of the county of Dukes County, shall not record or register, or receive or accept for recording or registration, any deed, except a mortgage deed, relative to a real property interest in land situated in any town that is a member of the land bank commission to which has not been affixed such a certificate, executed by the land bank commission or its designee. Failure to comply with this requirement shall not affect the validity of any instrument. The land bank commission shall deposit all fees received hereunder with the county treasurer of the county of Dukes County as part of the fund established by section eight. The fee imposed hereunder shall be due simultaneously with the time of transfer upon which it is imposed.

SECTION 11. At any time within seven days following the issuance of the certificate of payment of the fee imposed by section ten, the purchaser or his legal representative may return said certificate to the land bank commission or its designee for cancellation, together with an affidavit signed under oath or under the pains and penalties of perjury that the transfer, with respect to which such certificate was issued, has not been consummated, and thereupon the fee paid with respect to such transfer shall be forthwith returned to the purchaser or his legal representative.

SECTION 12. The following transfers of real property interests shall be exempt from the fee established by section ten. Except as otherwise provided, the purchaser shall have the burden of proof that any transfer is exempt hereunder:

- (a) transfers to the government of the United States, the commonwealth, and any of their instrumentalities, agencies or subdivisions;

- (b) transfers which, without additional consideration, confirm, correct, modify or supplement a transfer previously made;
- (c) transfers made as gifts without consideration; in any proceedings to determine the amount of any fee due hereunder, it shall be presumed that any transfer for consideration of less than fair market value of the real property interests transferred was made as a gift without consideration to the extent of the difference between the fair market value of the real property interests transferred and the amount of consideration claimed by the purchaser to have been paid or transferred, if the purchaser shall have been at the time of transfer the spouse, the lineal descendant, the lineal ancestor of the seller, by blood or adoption, and otherwise it shall be presumed that consideration was paid in an amount equal to the fair market value of the real property interests transferred, at the time of transfer;
- (d) transfer to the trustees of a trust in exchange for a beneficial interest received by the seller in such trust; distribution by the trustees of a trust to the beneficiaries of such trust;
- (e) transfers by operation of law without actual consideration, including but not limited to transfers occurring by virtue of the death or bankruptcy of the owner of a real property interest;
- (f) transfers made in partition of the land and improvements thereto, under the provisions of chapter two hundred and forty-one of the General Laws;

- (g) transfers to any charitable organization as defined in clause third of section five of chapter fifty-nine of the General Laws, or any religious organization, provided that the real property interests so transferred shall be held by the charitable or religious organization solely for its public, charitable or religious purposes;
- (h) transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee, and transfers of the property subject to a mortgage to the mortgagee in consideration of the forbearance of the mortgagee from foreclosing said mortgage;
- (i) transfers made to a corporation or partnership at the time of its formation, pursuant to which transfer no gain or loss is recognized under the provisions of section three hundred and fifty-one of the Internal Revenue Code of 1954;
- (j) transfers made to a stockholder of a corporation in liquidation of the corporation, and transfers made to a partner of a partnership in dissolution of the partnership;
- (k) transfers consisting of the division of marital assets under the provisions of section thirty-four of chapter two hundred and eight of the General Laws or other provisions of law;
- (l) transfers of property consisting in part of real property interests situated within a town that is a member of the land bank commission and in part of other property interests, to the extent that the property transferred consists of property other than real property situated within a town that is a member of the land bank commission provided that the

purchaser shall furnish the land bank commission with such information as it shall require or request in support of the claim of exemption and manner of allocation of the consideration for such transfers;

- (m) an amount, determined on or before January 1 of each year by the land bank commission after due analysis of the range of real estate prices in the member towns and in no event less than \$300,000, of the purchase price of a transfer made to a natural person who, or whose spouse, at the time of such transfer has at no time owned or possessed any real property interest as defined in section one either within or without any member town, provided that such person makes the real property interest which is the subject of the transfer his or her actual domicile within two years of the time of transfer; provided, further, that in the event of a subsequent transfer within five years of the transfer exempted from the fee under this subsection, other than the transfer of a mortgage to an institutional lender, the fee exempted shall become due, together with accumulated interest and penalties, and in addition to any fee otherwise due as a result of the subsequent transfer. The purchaser shall certify as to the foregoing, and the land bank commission shall attach to the deed a certificate which shall recite the fact that there is running with the land a lien equal to the amount of the fee exempted plus accumulated interest and penalties until such time as all conditions of this subsection have been met. The land bank commission shall have the power, at any time and from time to time, to require any purchaser claiming the exemption provided by this subsection to furnish such evidence of compliance with the requirements of this subsection as the land bank

commission shall deem necessary or appropriate. If any requirement or condition of this subsection is not met within the time specified, the amount of the fee exempted plus accumulated interest and penalties shall automatically become due and payable.

SECTION 13. A purchaser who fails to pay all or any portion of the fee established by section ten on or before the time when the same is due shall be liable for the following additional payments in addition to said fee:

- (a) Interest. The purchaser shall pay interest on the unpaid amount of the fee to be calculated from the time of transfer at a rate equal to fourteen per cent per annum.
- (b) Penalties. Any person who, without fraud or willful intent to defeat or evade a fee imposed by this act, fails to pay all or a portion of the fee within thirty days after the time of transfer, shall pay a penalty equal to five per cent of the outstanding fee as determined by the land bank commission for each month or portion thereof that the fee is not paid in full; provided, however, that in no event shall the amount of any penalty imposed hereunder exceed twenty-five per cent of the unpaid fee due at the time of transfer. Whenever the land bank commission determines that all or a portion of a fee due under this chapter was unpaid due to fraud with intent to defeat or evade the fee imposed by this chapter, a penalty equal to the amount of said fee as determined by the land bank commission shall be paid by the purchaser in addition to said fee.

SECTION 14. (a) The land bank commission shall notify a purchaser by registered or certified mail of any failure to discharge in full

the amount of the fee due under this act and any penalty or interest assessed. The land bank commission shall grant a hearing on the matter of the imposition of said fee, or of any interest or penalty assessed, if a petition requesting such hearing is received by the land bank commission within thirty days after the mailing of said notice. The land bank commission shall notify the purchaser in writing by registered or certified mail of its determination concerning the deficiency, penalty or interest within fifteen days after said hearing. Any party aggrieved by a determination of the land bank commission concerning a deficiency, penalty or interest may, after payment of said deficiency, appeal to the district or superior court within three months after the mailing of notification of the land bank commission. Upon the failure to timely petition for a hearing, or appeal to said courts, within the time limits hereby established, the purchaser shall be bound by the terms of the notification, assessment or determination, as the case may be, and shall be barred from contesting the fee, and any interest and penalty, as determined by the land bank commission. All decisions of said courts shall be appealable. Every notice to be given under this section by the land bank commission shall be effective if mailed by certified or registered mail to the purchaser at the address stated in a recorded or registered instrument by virtue of which the purchaser holds any interest in land, the transfer of which gives rise to the fee which is the subject of such notice; and if no such address is stated or if such transfer is not evidenced by an instrument recorded or registered in the public records in the county of Dupes County, such notice shall be effective when so mailed to the purchaser in care of any person appearing of record to have a fee interest in such land, at the address of such

person as set forth in an instrument recorded or registered in the county of Dukes County.

- (b) All fees, penalties and interest required to be paid pursuant to this act shall constitute a personal debt of the purchaser and may be recovered in an action of contract or in any other appropriate action, suit or proceeding brought by the land bank commission; said action, suit or proceeding shall be subject to the provisions of chapter two hundred and sixty of the General Laws.
- (c) If any purchaser liable to pay the fee established by this act neglects or refuses to pay the same, the amount, including any interest and penalty thereon, shall be a lien in favor of the land bank commission upon all property and rights to property, whether real or personal, belonging to such purchaser. Said lien shall arise at the time of transfer and shall continue until the liability for such amount is satisfied. Said lien shall in any event terminate not later than six years following the time of transfer. Said lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor unless notice thereof has been filed by the land bank commission (i) with respect to real property or fixtures, in the registry of deeds for the county of Dukes County, or (ii) with respect to personal property, in the office in which a security of financing statement or notice with respect to the property would be filed in order to perfect a nonpossessory security interest belonging to the person named in the relevant notice, subject to the same limitations as set forth in section fifty of chapter sixty-two of the General Laws.

In any case where there has been a refusal or neglect to pay any

fee, interest or penalties imposed by this act, whether or not levy has been made, the land bank commission, in addition to other modes of relief, may direct a civil action to be filed in a district or superior court of the commonwealth to enforce the lien of the land bank commission under this section with respect to such liability or to subject any property of whatever nature of the delinquent, or in which he has any right, title or interest, to the payment of such liability.

The land bank commission may issue a waiver or release of any lien imposed by this section with the approval of the town advisory board of the town or towns in which the property subject to the lien is located. Such waiver or release shall be conclusive evidence that the lien upon the property covered by the waiver or release is extinguished.

SECTION 14A. This act, being necessary for the welfare of the member towns and the county of Dukes County and their inhabitants, shall be liberally construed to effect the purposes hereof.

SECTION 15. Any town that is a member of the land bank may withdraw therefrom by the affirmative vote of a majority of the voters at any regular or special town election; provided, however, that any real property interest held by the land bank and situated in a town that withdraws from the land bank shall continue to be held by the land bank until such time as the land bank is dissolved in accordance with this act; provided, further, that no town may withdraw from the land bank until payment in full of all bonds and notes issued by the land bank prior to receipt by the land bank commission of written notice that an election has been called by such town to vote upon the question of such withdrawal. Any town that withdraws from the land bank shall not be liable for debts and obligations incurred by

the land bank subsequent to receipt of such notice by the land bank commission. A town that has so withdrawn may renew its membership by the affirmative vote of a majority of the voters at any regular or special town election at which the question of acceptance has been placed on the ballot. Upon the withdrawal of a town from the land bank, all funds then held in the account established for such town pursuant to section eight A, after payment or provision of payment has been made in full on all bonds and notes issued by the land bank prior to receipt by the land bank commission of written notice that an election has been called by such town to vote upon the question of such withdrawal, shall be transferred to the fund established by section eight.

If the member towns in the land bank are reduced to a number less than three the land bank shall be dissolved; provided, however, that the fee imposed by section ten shall continue to be imposed in each member town until all bonds and notes of the land bank issued while such town was a member have been paid in full, and the land bank shall continue in existence during such time for the sole purpose of administering and collecting such fee. Upon dissolution of the land bank, title to all funds and other properties held by the land bank shall vest in the towns of the county of Dukes County as herein provided after provision is made for payment of all bonds, notes and other obligations of the land bank. Interests in land held by the land bank at the time of dissolution shall be transferred to the town or towns in which the land is situated, and placed under the control and management of the local conservation commission who shall maintain, protect, limit the future use of, improve, or otherwise conserve and properly utilize open spaces of land. Such land shall remain subject to the provisions of Article XCVII of the Articles of Amendment to the Constitution of the Commonwealth. Funds held by the land bank shall be transferred

to the towns of the county of Dukes County as hereinafter provided, to be held in trust for the purpose of holding and managing the land transferred to the towns pursuant to this paragraph and other land held under the control and management of the local conservation commissions of the towns. Funds shall be transferred to each town in proportion to the fees generated by lands situated within such town over the life of the land bank under this act.

The land bank commission shall submit no amendment of this act to the general court unless and until such amendment has been approved by two-thirds of the member towns by the affirmative vote of a majority of the voters at a town meeting.

SECTION 16. Acceptance of this act, by each of the towns of Chilmark, Edgartown, Gay Head, Oak Bluffs, Tisbury and West Tisbury shall be by the affirmative vote of a majority of the voters at any regular or special town election at which the question of acceptance has been placed on the ballot. This act shall become effective on the date on which acceptance by all of said towns has been effected.