



# Martha's Vineyard Land Bank Commission

## RULES AND REGULATIONS GOVERNING THE PROCESSING OF THE LAND BANK TRANSFER FEE

*approved by vote of the land bank commission: July 2, 1990  
amended through: March 23, 2026*

### SECTION 1 — GENERAL

#### 1.01 PURPOSE

The Martha's Vineyard land bank commission, pursuant to section 3 of chapter 736 of the Acts of 1985 (Martha's Vineyard Land Bank Act), as amended, hereby adopts and establishes the following rules and regulations for the conduct of its proceedings and the application of its transfer fee to transfers of any real property interest within the member towns on Martha's Vineyard.

#### 1.02 EFFECTIVE DATE

These rules and regulations (the "Rules and Regulations") shall take effect on November 1, 2012 and apply to all transfers occurring on or after that date. All prior Rules and Regulations are hereby superceded.

#### 1.03 DEFINITIONS

For the purposes of these Rules and Regulations, the following words and phrases shall have the meanings set forth below. For convenience, the definitions from the Act are set forth herein, together with supplementary defined words.

**"Act"** shall refer to the Act Establishing the Martha's Vineyard Land Bank, Chapter 736 of the Acts of 1985, as amended.

**"Certificate"** shall refer to the item which appears herein as Exhibit A.

**"Commission"** shall refer to the Martha's Vineyard land bank commission, established and defined in section three of the Act.

**"Control", "Controlling" and "Controlling Interest"** shall have the meaning set forth in Securities and Exchange Commission Rule 405, promulgated under the Securities Exchange Act of 1933, as amended, stating the definition of these words as following: "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise."

**"Deferred Payment Value"** shall refer to any portion of a Purchase Price, the payment of which, at the Time of Transfer, has been deferred until a later date, or the payment of which is contingent upon other factors. Deferred payments for which, as of the Time of Transfer, no value has been determined shall be valued at present value, discounting to the Time of Transfer using the interest rate agreed upon by the Purchaser in the Transfer Documents or, if no interest rate has been so agreed upon, using the United States "prime rate" index as reported in the Wall Street Journal on the date of the Time of Transfer and compounded annually.

**"Entity"** shall refer to any non-natural person which legally exists, including without limitation a corporation, a partnership, a trust, a limited liability company, a limited liability partnership or a "Massachusetts business trust."

**"Fee"** shall refer to the two percent real estate transfer fee established under section ten of the Act.

**"Form LB1"** shall refer to Martha's Vineyard Land Bank Commission Form LB1 Affidavit Attesting to the True and Complete Purchase Price; it appears herein as Exhibit B.

**"Form LB2"** shall refer to Martha's Vineyard Land Bank Commission Form LB2 Affidavit Claiming Basis for Exemption from Transfer Fee; it appears herein as Exhibit C.

**"Form LB3"** shall refer to Martha's Vineyard Land Bank Commission Form LB3 Affidavit Attesting to Non-Consummation of Transfer; it appears herein as Exhibit D.

**"Form LB4"** shall refer to Martha's Vineyard Land Bank Commission Form LB4 Affidavit Requesting Rebate; it appears herein as Exhibit E.

**"Form LB5"** shall refer to Martha's Vineyard Land Bank Commission Form LB5 Corporation, Partnership or Trust Transfer Certificate; it appears herein as Exhibit F.

**"Forms"** shall refer to Forms LB1 and LB2 and LB3 and LB4 and LB5 as applicable.

**"Institutional Lender"** shall refer to "any bank as defined in section one of chapter 167 of the general laws, any insurance company as defined in section one of chapter 175 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 [of the Act], and any national bank, federal savings and loan [association], federal savings bank, bank holding company, or state or federally chartered credit union," as defined in section one of the Act.

**"Internal Revenue Code"** shall refer to the United States Internal Revenue Code of 1986, as amended. Any reference in any section of the Act or these rules and regulations to any provision of the Internal Revenue Code of 1954, as amended, shall refer to the corresponding provision of the 1986 Code.

**"Land Bank"** shall refer to the Martha's Vineyard land bank, established by section two of the Act, as defined in section one of the Act.

**"M Exemption Amount"** (as defined in section 12(m) of the Act) shall refer to the amount determined on or before January 1 of each year by vote of the Commission after due analysis of the range of real estate prices on the island and in no event less than \$300,000.

**"Operation of Law"** refers to the determination of rights and obligations through the automatic effects of the law and not by any direct or voluntary act of the party affected.

**"Purchaser"** shall refer to "the transferee, grantee or recipient of any Real Property Interest" as defined in section one of the Act.

**"Purchase Price"** shall refer to "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, 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 [or act] 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,” as defined in section one of the Act. The term “Purchase Price” shall include any “Deferred Payment Value,” defined above. The Fee shall not apply to the assumption of mortgages and like obligations to which the Purchaser is already jointly and severally liable.

**“Real Property Interest”** shall refer to “any present or future legal [or] equitable interest in or to real property, and any beneficial [or incremental] interest therein,” including but not limited to (i) the interest of any beneficiary of a trust which holds any legal or equitable interest in real property; (ii) lease rights and renewal options having a term of thirty years or more or those which provide for an automatic renewal at regular intervals, as described in Section 2.04(4); (iii) the interest of any partner or member of a partnership, limited partnership or a limited liability company; (iv) the interest of any stockholder in a corporation; (v) the interest of any shareholder under a Massachusetts business trust; (vi) the transfer of transferable development rights under chapter 183 of the general laws; and (vii) any estate for years; but shall not include any interest which is limited to any or all of the following: (i) the dominant estate in any easement or right of way; (ii) the right to enforce any restriction; (iii) any estate at will or at sufferance; (iv) any estate for years having a term of less than thirty years; (v) any reversionary right, condition, or right of entry for condition broken; (vi) the interest of a mortgagee or other secured party in any mortgage or security agreement; and (vii) any real property transfer that is, or will be at the time of the transfer, encumbered by a recorded perpetual affordable housing restriction or similar restricting instrument held by a governmental body or by a charitable corporation or trust whose purposes include creating or retaining or assisting in the creation or retention of affordable housing on Martha’s Vineyard, and the affordable housing restriction restricts the resale price of all or part of the Real Property Interest in order to assure its affordability by future purchasers whose annual income is equal to or less than 150 per cent of the areawide median income as determined by the United States Department of Housing and Urban Development (the Purchaser of any property transfer that meets the definition of 1.03 (vii) shall submit to the Commission documentation for verification prior to recording of the Transfer Documents).

**“Seller”** shall refer to “the transferor, grantor or immediate former owner of any Real Property Interest” as defined in section one of the Act.

**“Supporting Documents”** shall refer to any and all additional documents which will substantiate and verify, to the Commission’s satisfaction, claims of exemption including, but not limited to: schedules of beneficiaries, notarized gift letters, articles of organization, pertinent excerpts from divorce decrees, agreements,

assignments, probate or other court records and/or copies of deeds previously recorded.

**“Time of Transfer”** of any Real Property Interest shall mean the time at which such transfer is legally effective as between the parties thereto and, with respect to a transfer evidenced by an instrument intended to be recorded with the Dukes County registry of deeds or filed with the assistant registrar of the Dukes County registry district office of the land court, not later than “the time of such recording or filing” as defined in section one of the Act; or, with respect to a transfer, or a series of transfers, of interest(s) in an Entity, where the transfer instrument is not a deed to be recorded in the Dukes County registry of deeds or the Dukes County registry district of the land court, within two business days of each such transfer or assignment or conveyance.

**“Transfer Documents”** shall refer to the original deed or other transfer instrument, including but not limited to: bills of sale; stock powers; assignments; certificates of limited partners; leases; and schedules of beneficiaries, together with all Commission Forms required for the particular transfer, completed and fully executed.

#### 1.04 APPLICABILITY

These Rules and Regulations shall apply to the transfer of any Real Property Interest within the member towns on Martha’s Vineyard.

#### 1.05 AMENDMENTS

These Rules and Regulations or any portion thereof may be amended, supplemented or repealed from time to time by the Commission after a public hearing. Such hearing may be held either by the Commission on its own motion or by petition of the public.

## **SECTION 2 — SUBMISSION AND ACCEPTANCE OF REAL ESTATE TRANSFERS**

### 2.01 FORMS AND DOCUMENTS REQUIRED

- (1) The Commission hereby adopts the Forms attached hereto as the documents to be submitted to the Commission in connection with the transfer of any Real Property Interest within the member towns of Martha’s Vineyard.
- (2) At the time of transfer of any Real Property Interest, the Purchaser shall submit to the Commission the Transfer Documents.
- (3) In the event that a claim of exemption from the Fee is made, in part or in

whole, or the transaction involves a trust or other Entity, additional documents and Forms, listed in section 4 of these Rules and Regulations, shall be required at the time of filing.

- (4) Form LB1 shall be executed by the Purchaser or by an attorney licensed to practice law acting on behalf of the Purchaser. If any other Forms are required, they shall be executed by the Purchaser or may be executed by the Purchaser's legal representative, except as stipulated in Section 4.16(2) of these Rules and Regulations, provided [a] that the Purchaser's legal representative is acting under a power-of-attorney; and [b] that a copy of the applicable executed and notarized power-of-attorney is submitted with the Forms.
- (5) Receipt of documents by the Commission shall only be presumed when the documents bear a stamp reading "Received, Martha's Vineyard Land Bank Commission, [date]".

## 2.02 SUBMISSION COMPLETENESS

---

- (1) Pursuant to section ten of the Act, the Commission designates its executive director, or its executive director's designee(s), to review submissions for completeness, make preliminary determinations of compliance with the Act and the requirements set forth herein, and on a preliminary basis "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." If an exemption is being claimed, all Supporting Documents must be submitted at the Time of Transfer. The executive director or his designee(s) shall affix the Commission's Certificate only if the transfer appears clearly to qualify for the exemption. Otherwise, no Certificate shall be issued until the Fee is paid or the Commission has had the opportunity formally to review the transaction and finds that the claimed exemption applies. Where the executive director and/or his designee(s) cannot determine exemption qualifications from the Supporting Documents provided, the Fee shall be paid and may be reimbursed, if appropriate, in accordance with section 6. In no event shall a Certificate be issued if the Real Property Interest is subject to any existing lien in favor of the Commission until such time as said lien is satisfied.
- (2) After a Certificate is issued by the executive director or his designee(s), in accordance with section 2.02(1), the Commission shall formally review the action taken at one of its next regularly scheduled meetings and make a final determination of compliance. Should the Commission find the issuance of the Certificate stating that the transfer is exempt to be in error, the Commission may use the lien procedure set forth in Section 5 of these Rules

and Regulations. A Certificate may be revoked by the Commission if it later determines, after proceedings pursuant to Section 7 herein, that the transfer, alone or as part of a series of transfers, constitutes a transfer subject to the Fee. Such revocation, and collection of any deficiency determined to be due, may be enforced pursuant to any of the procedures described in Section 14 of the Act.

- (3) No transfer of any Real Property Interest shall be processed by the Land Bank unless accompanied by the required Forms, all Supporting Documents and any other documents required by these Rules and Regulations.
- (4) Each Form required to be submitted shall be accurately and completely executed by the Purchaser or Seller, as applicable or, if permitted, by an authorized representative prior to acceptance by the Land Bank.
- (5) If no exemption is claimed, or if a partial exemption is claimed leaving part of the Purchase Price subject to the Fee, a check made payable to the Martha's Vineyard Land Bank Commission is required at the Time of Transfer in the amount of two percent of the Purchase Price, or, if applicable, two percent of the Purchase Price not exempt.
- (6) The Commission hereby adopts the form of the Certificate attached hereto as Exhibit A, pursuant to section ten of the Act.

### 2.03 LAND BANK TRANSFER FEE

---

- (1) As set forth in section ten of the Act, a "Fee equal to two percent of the Purchase Price upon the transfer of any Real Property Interest situated in a member town or towns" shall be paid by the Purchaser at the Time of Transfer. The Purchase Price must include all sums paid or things given in exchange for any Real Property Interest, whether or not paid or given to the named Seller.
- (2) The Fee shall be computed utilizing the fair market value of the Real Property Interest transferred.
  - (a) In the absence of a specified Purchase Price, or in the absence of satisfactory proof of value submitted by the Purchaser, or in the event that a stated Purchase Price is believed by the Commission to be inconsistent with fair market value, the Fee shall be computed using fair market value. The Commission, in its discretion, may determine fair market value by any of the following three methods:

- (i) utilizing the town assessors' value at the Time of Transfer; or
  - (ii) obtaining an appraisal by an independent licensed appraiser of the Commission's choice; or
  - (iii) examining the appraisal prepared for the Purchaser's purchase money lender.
- (b) As to any portion of the Purchase Price comprising deferred payments or other forms of deferral, such as an exchange for services, or other forms of deferred or contingent consideration, that portion of the Fee shall be determined based on the Deferred Payment Value.
  - (c) When a Fee is due as a result of a series of related transactions, the Fee shall be determined based upon the fair market value of the cumulative Real Property Interests transferred, all valued at the Time of Transfer of the last Real Property Interest within the series which resulted in the Fee's being due.
  - (d) Where a Real Property Interest is transferred subject to a mortgage or other indebtedness, the Fee shall be computed utilizing the sum of (i) the cash or other consideration given; and (ii) the value of any debt assumed; and (iii) any outstanding obligation to which the Real Property Interest transferred remains subject after the transfer.
- (3) The Fee shall be the personal liability of the Purchaser. Any agreement between the Purchaser and the Seller or any other party with reference to the allocation of the responsibility for bearing the Fee shall not affect the liability of the Purchaser.
  - (4) In the event of multiple Purchasers, payment of the Fee shall be the joint and several obligation of the Purchasers.
  - (5) The Fee shall be paid by check made payable to the Martha's Vineyard Land Bank Commission and delivered to its administrative headquarters during its regular business hours.

#### 2.04 SPECIFIC REAL PROPERTY INTEREST TRANSFERS

- (1) Non-Deed Entity or Trust Transfers. Pursuant to the definition of "Real Property Interest" in the Act, an interest in a trust or an Entity which holds any Real Property Interest is also a Real Property Interest. Therefore, all

assignments of beneficial interest or other non-deed transfers of interests, legal or equitable, in a trust or an Entity holding any Real Property Interest in a member town are subject to the Fee, unless the trust or Entity is otherwise exempted pursuant to section 12 of the Act. The Fee shall be determined based on the fair market value of the ownership interest at the Time of Transfer.

- (2) Series of Transfers. A series of transfers of interests in Entities or trusts may be subject to the Fee if it appears that the series of transfers occurred as a part of a single transaction or scheme yielding a non-exempt result, even though the individual transfers in the series are each exempt.
- (3) Other Non-Deed Transfers. Non-deed transfers of ownership in an Entity or trust are subject to the Fee if [a] real property on Martha's Vineyard makes up all or substantially all of the assets of such Entity or trust; [b] if such Entity or trust does not transact business in the ordinary sense, but rather functions solely as a shell entity; or [c] if such transfers have been made for the purpose of evading the Fee.
- (4) Leases. Leases having a lease term of thirty (30) years or more or those that provide for automatic renewal at the option of the tenant at regular intervals which, if exercised, will result in a cumulative lease term of 30 years or more are subject to the Fee.

The Fee shall be computed on the Purchase Price (at "present value" at the Time of Transfer of the lease payments over the term of the lease), as defined in these Rules and Regulations under the meaning of Purchase Price.

To determine "present value" where there is an automatic renewal of the lease, such payments shall be included in the computation of "present value." Where the renewal of the lease requires the execution of additional renewal paperwork by the parties, the computation of "present value" shall not include payments under any such renewal period.

The transfer of a dwelling or structure by bill of sale in conjunction with the acquisition of a lease shall constitute the transfer of a Real Property Interest for the purposes of this section. The purchaser shall, at the Time of Transfer, file with the Land Bank a copy of the bill of sale or instrument of transfer and a copy of the lease, in order that a proper determination may be made by the Commission.

- (5) Transfer for Less Than Fair Market Value. In general, fair market value will

be determined by using the value assigned by the assessors' offices of the member towns for the period in which the transfer took place.

In situations where the Purchase Price stated on the LB1 Form is more than twenty-five percent (25%) less than the assessed value, it shall be assumed that additional consideration was paid. The Fee will be due based on two (2%) percent of the assessed value unless satisfactory Supporting Documents, e.g., a fully-executed purchase-and-sale agreement, are submitted.

Assessed values for the transfer of partial Real Property Interests shall be computed by applying the proportion of the interest being transferred to the total assessed value for the property as determined by the assessor's office of the member town(s).

- (6) Transfers of Land Slivers. Sliver transfers resolving bona fide boundary line disputes, or implementing a bona fide boundary line agreement, shall be exempt from the Fee under exemption "b" or "c" unless the transfer provides either landowner with additional rights under zoning, subdivision, health or like codes. In such a case, the Fee due shall be calculated by comparing the value of the property without the sliver to the value of the property with the sliver, and assessing a Fee on the difference between the two values.
- (7) Tax-Free Exchanges. A tax-free exchange of any Real Property Interest under the Internal Revenue Code, as amended, is subject to the Fee unless otherwise exempted pursuant to section twelve of the Act. Each Real Property Interest shall be subject to the Fee as if sold separately; and the Purchase Price shall be computed on the basis of the Real Property Interest to be exchanged pursuant to the definition of "Purchase Price" set forth in Section 1.03 of these Rules and Regulations. In the event that the exchange involves the transfer of three (3) Real Property Interests, only two (2) of which are for value, then the Fee is not due on the third transfer for which no value was received or transferred.
- (8) Remainders and Life-Estates. Remainders and life-estates are Real Property Interests subject to the Fee. In the absence of a stated Purchase Price, remainders and life-estates will be valued at Deferred Payment Value.

## **SECTION 3 — REQUIREMENT OF SUPPLEMENTAL DOCUMENTATION**

### **3.01 REQUESTS FOR ADDITIONAL INFORMATION**

---

- (1) After it has reviewed the Purchaser's Supporting Documents, the Commission may request, at any time, additional documents substantiating information given in order to make a determination of compliance with the Act. Such requests may pertain to any direct or indirect party to a transaction, and may be for, but shall not be limited to, tax returns; underlying agreements; stock powers; certificate of transfer agents and certificates of limited partnerships; lists of owners, members, partners or beneficiaries; or any other documents which will provide satisfactory evidence, in the Commission's sole discretion, of the facts set forth in the Forms submitted.
- (2) Unless otherwise specified in the notice, such documents and/or information requested shall be provided by the Purchaser within 15 days of the mailing date of the Commission request, which date of mailing shall be clearly displayed on the request.
- (3) Such requests shall be mailed to the Purchaser, with a copy to any representative (specifically including any attorneys at law) executing the Forms, provided that a mailing address for such representative was entered on the Form. Delivery of notice solely to a Purchaser's representative shall constitute notice to the Purchaser.

### 3.02 FAILURE TO COMPLY

---

- (1) Failure to comply with a Commission request for supplemental Supporting Documents and/or information may result in a determination by the Commission of non-compliance with the Act.
- (2) Non-compliance with the Act may result in the placing of a lien against the property of the Purchaser pursuant to section 5 of these Rules and Regulations.
- (3) All submissions to the Commission shall be under the pains and penalties of perjury; it shall be unlawful to supply false information to the Commission. The submission of false information may be referred to the district attorney for the Cape and Islands district.

## **SECTION 4 — APPLICABILITY OF EXEMPTIONS FROM THE LAND BANK FEES**

### 4.01 BURDEN OF PROOF

---

The Purchaser shall have the burden of proof that any transfer is exempt under the Act. No exemption shall be deemed to apply without proof of compliance with the

claimed exemption submitted by the Purchaser, and in a form satisfactory to the Commission.

#### 4.02 COMMISSION INTERPRETATION OF EXEMPTION APPLICABILITY

The Commission shall have the sole responsibility for interpreting and applying any exemption from the Fee.

#### 4.03 LAND BANK FEE EXEMPTIONS

Pursuant to section 12 of the Act, exemptions from the Fee and the Commission's interpretation of applicability are as set forth in sections 4.04 through 4.16 of these Rules and Regulations.

#### 4.04 THE "A" EXEMPTION

As stated in section 12(a) of the Act, the "a" exemption applies to "transfers to the government of the United States, the commonwealth, and any of their instrumentalities, agencies or subdivisions."

- (1) Any portion of a Purchase Price which is funded by a government institution — federal, commonwealth, county or municipal — shall to that extent be eligible for this exemption provided (i) that in exchange for such funding the Real Property Interest is subject to permanent price control upon resale; and (ii) that the deed explicitly identifies the amount of public funding, so that the Land Bank can calculate the Fee due on the balance.

#### 4.05 THE "B" EXEMPTION

As stated in section 12(b) of the Act, the "b" exemption applies to "transfers which, without additional consideration, confirm, correct, modify or supplement a transfer previously made."

- (1) Evidence of the transfer previously made shall be required to substantiate the applicability of the "b" exemption. Such evidence shall include a photocopy of the deed previously recorded in the Dukes County registry of deeds and a letter explaining the nature of the transaction and/or such additional information as explains, to the Commission's satisfaction, the basis for the claimed exemption.
- (2) This exemption shall not apply if the previous transfer is found not to have been in compliance with the Act.

#### 4.06 THE "C" EXEMPTION

As stated in section 12(c) of the Act, the "c" exemption applies to 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 Interest(s) transferred was made as a gift without consideration to the extent of the difference between the fair market value of the Real Property Interest(s) transferred and the amount of consideration claimed by the Purchaser to have been paid or transferred if the Purchaser was, at the Time of Transfer, the spouse, lineal descendant or 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 Interest(s) transferred, at the Time of Transfer.

- (1) Any claim of the "c" exemption shall be routinely forwarded to the Internal Revenue Service, except for transfers between spouses and lineal descendants and ancestors, to verify that Form 709 will be filed.
- (2) Purchasers who are not spouses, lineal descendants or lineal ancestors of the transferor may be required by the Land Bank to submit notarized evidence from all parties to the transaction at the time the exemption is claimed in order to clarify the details of the transaction and to rebut the presumption that the consideration equaled fair market value. The presumption shall not be rebutted except by a demonstration of clear and convincing evidence.
- (3) In the event that a gift is claimed and the recipient is a nominee and/or an Entity, full disclosure of the identity of the principal(s) for whom the nominee or Entity will hold title is required, for example, an executed schedule of beneficiaries, a complete and accurate list of the owners thereof, or such other instrument as shall accurately identify the principal(s) and the interest received by each applicable party.
- (4) The exemption shall be automatically denied if any document requested under this section is not provided.
- (5) The Commission staff shall examine each "c" exemption in order to determine whether any mortgage(s) or like obligation(s) are being assumed by the Purchaser.
- (6) The "c" exemption shall also apply to "straw" deeds. Straw deeds shall be limited to transfers to and from a third party undertaken solely for purposes of conveying back to the transferor or to the transferor and other(s), where the straw realizes no loss or gain in the transaction. The straw must have no powers or duties except the power to execute and deliver a deed for such reconveyance.

#### 4.07 THE "D" EXEMPTION

As stated in section 12(d) of the Act, the "d" exemption applies to a "transfer to the trustees of a trust in exchange for a beneficial interest received by the seller in such a trust; [or] distribution by the trustees of a trust to the beneficiaries of such trust."

- (1) Exemption "d" applies only when the following is true: (i) with respect to a transfer into a trust, the beneficial interest received by each Seller is in proportion to the interest transferred; or (ii) if the transfer is to an estate planning trust, the Seller is the settlor and donor under the estate planning trust; or (iii) with respect to a transfer out of a trust, the distribution to each beneficiary, is in proportion to the beneficial interest previously held.
- (2) A claim of exemption "d" shall require filing with the Land Bank a complete and accurate and notarized schedule of beneficiaries signed under the pains and penalties of perjury or copies of the pertinent pages of the trust document which identify such beneficiaries. Each beneficiary's percentage interest shall be identified; the immediately previous schedule shall also be provided, so that the Land Bank can confirm that no transfer of interests has occurred.
- (3) In the event that the transfer is both a gift and a transfer into or out of a trust or a transfer between existing beneficiaries of the trust, the Purchaser must also designate the "c" exemption on Form LB2 and provide a complete, accurate and notarized schedule of beneficiaries of the trust which identifies the relationship among the beneficiaries.
- (4) The "d" exemption shall not apply to transfers for a Purchase Price.
- (5) The "d" exemption shall apply only to that portion of the transaction in which the Seller retains an interest as a beneficiary of the trust.
- (6) Form LB5 shall be submitted with any claim for a "d" exemption.

#### 4.08 THE "E" EXEMPTION

As stated in section 12(e) of the Act, the "e" exemption applies to "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."

- (1) In the case of a bankruptcy or death or other transfer by Operation of Law, the sales of any other Real Property Interest by a fiduciary (such as a trustee, receiver, executor or administrator) to disinterested third parties shall not be exempt.

- (2) Evidence documenting that the event constitutes a transfer by Operation of Law is required at the time of filing.

#### 4.09 THE "F" EXEMPTION

As stated in section 12(f) of the Act, the "f" exemption applies to "transfers made in partition of the land and improvements thereto, under Chapter 241 of the General Laws."

- (1) Filing a petition-to-partition shall not by itself be deemed a partition of land; instead, exemption "f" shall apply if a decree is issued by a court of competent jurisdiction requiring a physical division of real property into divided parcels of real property, the size and configuration of which correspond to the pre-partition ownership interests in the undivided parcel.
- (2) No sale of a Real Property Interest pursuant to a court decree of partition shall be deemed a partition of land, except as provided in Section 4.09(3) below.
- (3) In the event of a court order to convey all or any part of the real property that is the subject of a petition-to-partition to an interested party, the "f" exemption shall apply only to that portion of the Real Property Interest previously held by the Purchaser. Any portion of the Purchase Price which is in excess of the fair market value of the Real Property Interest previously held by the Purchaser shall be subject to the fee.
- (4) A claim of the "f" exemption shall require the Purchaser to file with the Land Bank the court decree and all relevant court documents pertaining to the petition-to-partition under chapter 241 of the General Laws.
- (5) Exemption "f" shall also be applicable to a voluntary partition of real property, title to which is held by multiple owners, but only if the Real Property Interest transferred to each co-tenant is proportionally equal in value to the value of the undivided interest previously held by such co-tenant prior to the voluntary partition; a Fee shall be paid for any increased value received by any one co-tenant or on any Purchase Price therefor.

#### 4.10 THE "G" EXEMPTION

As stated in section 12(g) of the Act, the "g" exemption applies to "transfers to any charitable organization as defined in clause third of section five of chapter 59 of the General Laws, or any religious organization, provided that the Real Property Interests so transferred will be held by the charitable or religious organization solely for its public charitable or religious purposes."

- (1) Exemption "g" shall apply, but shall not be limited to, transfers made to charitable or religious organizations, whether or not chartered in Massachusetts, so long as:
  - (a) the Real Property Interest will be held, used and/or occupied by such organization or its officers solely for the public, charitable and/or religious purposes for which it is organized;
  - (b) the charitable or religious status of the organization remains in full force and effect and the Commission is so notified of same;
  - (c) the purchaser has been granted tax-exempt status under section 501(c)(3) of the internal revenue code of 1986, as amended, or any successor or corresponding provision of any United States internal revenue law; and
  - (d) no structure on the real property comprising the Real Property Interest shall be occupied or used wholly or principally as a residence by the officers or members of any such charitable institution or religious organization unless such structure is on real property which is part of or contiguous to real estate which is the principal location of such institution or organization.
- (2) The Commission may require that the Purchaser submit:
  - (a) a letter from the Internal Revenue Service indicating that the Purchaser has been granted tax-exempt status under section 510(c)(3) of the internal revenue code of 1986, as amended, or any successor or corresponding provision of any future United States internal revenue law; and that such tax-exempt status remains in effect; and/or
  - (b) a copy of the Purchaser's charitable or religious charter and/or operating bylaws; and/or
  - (c) such other information as the Commission deems necessary to demonstrate that the Purchaser is entitled, and continues to be entitled, to this exemption.
- (3) In the event that such Real Property Interest ceases, at any time during the Purchaser's ownership of the Real Property Interest but within five years from the Time of Transfer, to qualify for the "g" exemption, the Fee exempted shall become due, together with accumulated interest and penalties from the

date on which such Real Property Interest failed to so qualify. The Commission may attach to the deed or otherwise record in the registry of deeds or registry district office of the land court a certificate which shall recite that there is a lien running with the land 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. Upon a final determination by the Commission or its designee of compliance with the conditions of this subsection, the Commission shall provide to the Purchaser a certificate of release of the lien, which the Purchaser shall record at the Purchaser's sole cost and expense.

#### 4.11 THE "H" EXEMPTION

As stated in section 12(h) of the Act, the "h" exemption applies to "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."

- (1) In a foreclosure the outstanding principal, interest and other fees and expenses constituting debt under the mortgage will not be included in computation of the Fee due. In computing the Fee all other consideration, including but not limited to the outstanding balances due on mortgages or liens superior to the foreclosed mortgage (being defined herein as Purchase Price) shall be subject to the Fee.
- (2) A claim of the "h" exemption shall require documented proof (i) that the party foreclosing the mortgage is the current record holder of the mortgage being foreclosed; and (ii) of the amount of the principal and interest and expenses outstanding at the Time of Transfer on the foreclosed mortgage and any superior mortgage or lien.
- (3) The "h" exemption shall apply when the Real Property Interest is transferred to an Entity of which the mortgage holder is the owner.
- (4) Sheriff's sales shall be eligible for the "h" exemption, provided that they meet, if applicable, the additional consideration standards in section 4.11(1) of these Rules and Regulations. No other transfer of any real property interest to a party other than the mortgagee shall qualify for exemption "h".
- (5) This exemption shall not apply to transfers to a mortgage holder where (i) the transaction is not at arms-length; (ii) the transaction is not commercially reasonable; or (iii) the transaction is intended to evade the payment of the Fee.

#### 4.12 THE "I" EXEMPTION

---

As stated in section 12(l) of the Act, the "I" exemption applies to "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 351 of the Internal Revenue Code of 1954, as amended."

- (1) A claim of the "I" exemption shall require filing with the Land Bank evidence (i) documenting the formation of the corporation, partnership, limited liability company, limited liability partnership or other Entity (except a trust, as trusts are governed by Section 4.07); (ii) identifying the owners of the Entity; and (iii) identifying the interests held by each party at the time of formation. To be eligible for the exemption the Seller must retain an interest in the Entity which is equivalent in value to the interest the Seller held prior to the transfer.
- (2) The "I" exemption shall also be applicable to transfers of Real Property Interests into a previously-formed non-trust Entity, provided that the Seller retains an interest in such Entity equivalent in value to the interest the Seller held prior to the transfer. The non-trust Entity shall file with the Land Bank documents evidencing the formation of the Entity and identifying the interests held by the parties thereto both prior to and after the Time of Transfer.

#### 4.13 THE "J" EXEMPTION

---

As stated in section 12(j) of the Act, the "j" exemption applies to "transfers made to a stockholder or a corporation in liquidation of the corporation, and transfers made to the partner of a partnership in dissolution of the partnership."

- (1) A claim of the "j" exemption shall require the filing with the Land Bank of documents evidencing (i) the complete or partial liquidation, and/or dissolution of a non-trust Entity, (ii) the parties to whom the assets of the non-trust Entity are being transferred, and (iii) the interests held by each transferee in the Entity immediately prior to complete or partial liquidation and/or dissolution as well as the interest held by each transferee in the Entity immediately following any complete or partial liquidation or dissolution.

#### 4.14 THE "K" EXEMPTION

---

As stated in section 12(k) of the Act, the "k" exemption applies to "transfers consisting of the division of marital assets under the provisions of section 34 of chapter 208 of the General Laws or other provision of law."

- (1) The "k" exemption shall only apply to divisions of marital assets ordered by a court decree. The transfer instrument must specifically state that the

transfer constitutes a "division of marital assets" and the decree or transfer instrument shall be filed with the Land Bank.

- (2) The "k" exemption does not apply to sales of any Real Property Interest to third parties, even if ordered by a court as part of a division of marital assets.

#### 4.15 THE "L" EXEMPTION

As stated in section 12(l) of the Act, the "l" exemption applies to "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 [Interests] 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."

- (1) Whenever there is a conveyance of Real Property Interests and a conveyance of personalty related thereto at or about the same time, the allocation of value between real estate and personalty agreed to by the Purchaser and Seller shall not determine the amount of the Fee; instead, the Commission shall require payment of the Fee based on the fair market value of the Real Property Interests, as determined by the Commission.
- (2) Whenever there is a conveyance at or about the same time of Real Property Interests situated both inside and outside the members towns, the allocation of value agreed to by the Purchaser and Seller shall not determine the amount of the Fee due. Instead, the Commission may require payment of the Fee for the fair market value of the Real Property Interests situate inside the member town(s). The Commission may in its discretion (i) utilize the town assessors' value; (ii) appoint an independent appraiser; or (iii) utilize the appraisal done in connection with the transfer.
- (3) The Purchaser shall provide a copy of any bill of sale for personal property transferred at the Time of Transfer.

#### 4.16 THE "M" EXEMPTION

As stated in section 12(m) of the Act, the "m" exemption applies to the "M" Exemption Amount of the Purchase Price "of a transfer made to a ... [Purchaser] who, or whose spouse, at the Time of ... Transfer has at no time [before the said transfer] owned or possessed any Real Property Interest as defined in section one either within or without any member town, provided that ... [the Purchaser shall make] the Real Property Interest which is the subject of the transfer the Purchaser's

actual domicile within two years of the Time of Transfer”; and shall domicile permanently or for an indefinite period of time and without any certain purpose to return to a former place of abode. In the event of a later transfer which takes place within five years of the Time of Transfer of the Real Property Interest 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 later transfer. The Purchaser shall personally certify as to the foregoing; no representative signatures shall be accepted. The 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.

- (1) The Purchaser shall make the Real Property Interest which is the subject of the transfer the Purchaser’s actual full-time domicile on or before the second anniversary of the Time of Transfer and must retain the Real Property Interest for the duration of a quinquennium commencing at the Time of Transfer. The Purchaser shall provide to the Land Bank such Supporting Documents as may be requested by the Commission from time to time to confirm compliance with this requirement of the “m” exemption.
- (2) To confirm the Purchaser’s intention to abide by the requirements of the “m” exemption, Form LB2 shall be signed by at least one Purchaser and no representative signatures shall be accepted.
- (3) Upon a final determination by the Commission of compliance with all the requirements of the “m” exemption, the Commission shall provide to the Purchaser a certificate of waiver or release of the lien which the Purchaser may record, at the Purchaser’s sole expense.
- (4) A claim of the “m” exemption may be made for transfers (i) to eligible parties in their individual names; or (ii) to eligible parties taking title in a nominee form of ownership of which the eligible parties are the actual owners.
- (5) In the event of a nominee form of ownership, the exemption shall apply only to nominees which are established for the sole purpose of holding the Real Property Interest, and which cause authorized signatories to execute and deliver to the Land Bank a recordable affidavit relinquishing all future “m” exemption eligibility by such nominee and by its principals (the actual owners). The “m” exemption applies to nominee forms of ownership only if all the principals would be entitled to the exemption if the Real Property Interest was recorded in their individual names.

- (6) In the event of multiple purchasers, the "m" exemption shall apply proportionately to that portion of the Purchase Price which is paid by the individual or individuals claiming the exemption; however, in no event shall the amount of the Purchase Price exempted in any transaction or series or related transactions exceed the "M" Exemption Amount nor the proportion of the "M" Exemption Amount that is ascribable to any Purchaser(s) meeting the "m" eligibility requirements.
- (7) In the event the "m" exemption is claimed by a trust or an Entity on behalf of its beneficiaries, stockholders, members or partners, then the Purchaser must provide a list of all beneficiaries of the trust or all owners of the Entity, including the proportions held by each beneficiary or owner. The "m" exemption shall be applied as if the parties who are beneficiaries of the trust or who own the Entity were directly purchasing the Real Property Interest in their individual names. The exemption shall be granted only (i) if a recordable affidavit relinquishing any all future eligibility to claim the "m" exemption is executed by all of the beneficiaries of the trust or all of the owners of the Entity and (ii) if all beneficiaries of the trust or owners of the Entity are individual persons.
- (8) Domicile shall be determined on a case-by-case basis using the standards and tests applied by Massachusetts courts in determining domicile.
- (9) A Real Property Interest being conveyed to any married Purchaser or Purchasers is eligible for the "m" exemption only if both individuals comprising the married couple have never before, as of the Time of Transfer, owned any Real Property Interest anywhere for any length of time.
- (10) Where a prior interest in real property was held, the purchaser must be able to prove that it was a non-equitable form of ownership in order to be granted a waiver of the fee under the "m" exemption. The purchaser must show that title was held only as a straw and that the purchaser did not participate in the expenses of ownership. Such proof should include, but not be limited to: (i) copies of the individual's income tax returns and depreciation schedules for that period of time in which he had a legal interest in the property; (ii) any statement or form on which the petitioner had to list his assets for that period of time during which he held a legal interest in the property, as on a loan/mortgage application or the like; and (iii) other documentation showing the financial participation of the true owner and the lack of financial participation by the purchaser.
- (11) If a Real Property Interest which is the subject of an "m" lien is transferred within five years of the Time of Transfer, the Fee shall immediately become

due. Transfer of even a portion of the property or an interest in the property, unless to a Purchaser who qualifies for the "m" exemption, shall trigger payment of the entire Fee.

- (12) The Commission may, at public hearing, extend by one year the two-year period by which all claimants of the "m" exemption must make the property their permanent domicile. This shall only occur when the Commission has determined that circumstances outside of the Purchasers' control have interfered with their ability to domicile there permanently. If, after this one year, a Purchaser still has not permanently domiciled on the property, a second one-year extension may also be permitted, in the Commission's discretion. No further extensions shall be permitted.
- (13) Upon written request, payment of the Fee, as well as any penalties and interest, will be waived in the event that a Real Property Interest subject to an "m" lien is transferred to an institutional lender as part of foreclosure proceedings. Such release will in no way affect the land bank's entitlement to a fee upon the purchase price of the Real Property Interest by a third party at a mortgage foreclosure sale or by the institutional lender to the extent of the difference of the amount of the mortgage and the purchase price.
- (14) The Fee shall not be due on the purchase of any partial interest in real property if the Purchaser already owns a partial interest in the same real property and acquired that interest using a valid "m" exemption.
- (15) "M" claimants may elect to pay at the Time of Transfer the exempted portion of the Fee rather than subject their property to a lien. This Fee shall be refunded, without interest, upon request at the end of the domicile period, if the claimants have submitted, on the third, fourth and fifth anniversaries of the Time of Transfer, documentation satisfactory to the Land Bank establishing that the Act's domicile requirements are being met.
- (16) "M" liens shall automatically be subordinated to any subsequent refinancing of the "m" mortgage.

#### 4.17 ADVANCE RULINGS

A Purchaser may request a formal ruling or determination by the Commission with respect to an application for an exemption from the Fee or a determination of its inapplicability, prior to the Time of Transfer, as follows:

- (1) Any request for a ruling or determination is to be submitted in writing sixty (60) days prior to the proposed Time of Transfer, and shall be accompanied

by all proposed Transfer Documents.

- (2) Such request shall be accompanied by a deposit of \$2,500 payable to the Land Bank in order to cover expenses associated with legal research. Any unexpended funds will be reimbursed to the Purchaser and any additional legal fees in excess of the \$2,500 deposit will be charged to the Purchaser.
- (3) Provided that the provisions of sections 4.17(1) and 4.17(2) have been complied with, the Commission shall hold a hearing and issue a ruling or determination not later than ten (10) days prior to the Time of Transfer.
- (4) Each purchaser shall be entitled to only one (1) such request for any particular transfer.
- (5) In the event of such a ruling or determination, the Commission shall process the transfer in accordance with its ruling, unless actual circumstances of the transfer are different from the circumstances presented in the request for ruling or determination.
- (6) Informal consultations with Land Bank staff or Commissioners are permitted at any time but shall not constitute a formal determination binding on the Commission.

**SECTION 5 — TYPES OF PAYMENT,  
LIENS AND PENALTY AND INTEREST ASSESSED**

5.01 TYPES OF PAYMENT

---

- (1) Fees will be accepted in the following ways: an attorney's client's escrow account check, or a certified or cashier's bank check.

5.02 LAND BANK LIENS

---

- (1) Pursuant to section 14(c) of the Act, in the event that the Commission determines that there has been a failure to pay all or any portion of a Fee assessed, the Commission is authorized to file a lien against all property and rights to property, real or personal, belonging to the Purchaser for the delinquent Fee, together with penalties and interest running from the Time of Transfer to the time of payment in full.

5.03 LIEN RELEASES

---

- (1) No lien shall be waived or released until all requirements of the Act and

these Rules and Regulations have been met, except that the initial lien shall terminate not later than six (6) years following the Time of Transfer. The Commission may initiate proceedings at any time prior to the expiration of such six-year period to foreclose such lien.

- (2) After a Commission determination of compliance with the Act, the Commission shall execute either a waiver or release of lien.
- (3) Fees and recording of a waiver or a release of lien shall be the sole responsibility of the Purchaser. Pursuant to section 14(c) of the Act, "Such waiver or release shall be conclusive evidence that the lien upon the property covered by the waiver or release is extinguished."

#### 5.04 CALCULATING PENALTIES AND INTEREST

- (1) Pursuant to section 13 of the Act, "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]* penalties and *[b]* interest.
- (2) Pursuant to section 13 of the Act, penalty not associated with fraud begins to accrue thirty (30) days after the Time of Transfer at a rate of five (5%) percent per month or portion thereof, not to exceed twenty-five (25%) percent of the Fee due. Penalty associated with fraud or willful intent to defeat or evade the Fee begins to accrue at the Time of Transfer in an amount equal to the original Fee due.
- (3) Pursuant to section 13 of the Act, interest accrues from the Time of Transfer at a rate of fourteen (14%) percent per annum.

### SECTION 6 — REFUNDS

#### 6.01 PURCHASER REQUEST FOR REFUND

- (1) Any request for refund, challenge, protest or objection to any payment required pursuant to Section 2 of these Rules and Regulations shall be made in writing at the time that the Certificate is affixed, except *[a]* as is provided for in section 11 of the Act regarding uncompleted transfers, which shall be made within seven (7) days of the date that the Certificate is affixed; or *[b]* when, in the case of a good-faith mistake, a purchaser requests a refund within seven days of the Time of Transfer or within a time period deemed acceptable by a two-thirds vote of the Commission.

- (2) In the case of simple mathematical errors, which term shall only refer to an error in calculating the Fee paid and which involves no change in the Purchase Price or in the Real Property Interest involved in the transfer, the Commission may act promptly without a hearing to determine any overpayment which has occurred and any amount refundable.
- (3) In all other cases the Commission shall, upon receipt of a written request, hold a hearing and make a determination as to whether any overpayment has occurred and as to any amount refundable.
- (4) In the event of a Commission determination of overpayment, the Commission shall notify the Purchaser in writing by registered or certified mail within fifteen (15) days after said hearing of its determination and shall issue a refund to the Purchaser within forty-five (45) days of such determination.
- (5) Only sums overpaid are refundable. No interest shall accrue to the Purchaser on sums overpaid.
- (6) No request for a refund shall be reviewed by the Commission after a determination has been rendered pursuant to section 6.01(3) of these Rules and Regulations.
- (7) Any party aggrieved by a determination of the Commission concerning a refund may appeal to the district or superior court of Dukes County within three (3) months of a determination of the Commission.
- (8) As stated in section 14(a) of the Act, "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."

## **SECTION 7 — DEFICIENCY ASSESSMENT, HEARINGS AND DETERMINATION**

### **7.01 DEFICIENCY ASSESSMENT**

---

In the event that the Commission determines that there has been a failure to discharge in full a Fee due under the Act, it shall issue a Notice of Assessment in the full amount of the Fee due under the Act and any penalties or interest assessed. Such Notice of Assessment may be superceded by a determination made by the Commission within thirty (30) days of a request for a hearing and the

completion of the hearing pursuant to Section 7.02, below.

#### 7.02 DEFICIENCY HEARING

---

- (1) A request for a hearing, pursuant to section 14 of the Act, to contest the assessment of a Fee, together with penalties and interest, shall be granted by the Commission upon receipt of a written request for a hearing received within thirty (30) days of the mailing date of the Commission's Notice of Assessment, which date shall be clearly displayed on the Notice. The Commission may reconsider assessment of a Fee at any time prior to a hearing and within thirty (30) days of the date of the Notice of Assessment, based upon new information received by the Commission subsequent to the assessment of a Fee.
- (2) After a request for a hearing has been made, pursuant to this Section 7.02 of these Rules and Regulations, the Purchaser may make a refundable payment of all or any part of the Fee, penalties or interest assessed, without waiving its right to the requested hearing. In the event such payment is made, the hearing shall proceed in the same manner as if the deficiency had not been paid, except that no interest or penalties shall accrue after the date of payment against that portion of the deficiency found to be due and previously paid.

#### 7.03 HEARING DETERMINATION

---

- (1) The Commission shall make a determination and render a written decision on the matter of amount due or refundable within fifteen 15 days after a hearing.
- (2) In the event that the Commission determines that the amount of a deficiency is less than the amount paid pursuant to Section 7.02(2) of these Rules and Regulations, the Commission shall follow the refund procedures set forth in Section 6 of these Rules and Regulations.

#### 7.04 SUBPOENAS

---

- (1) Should the interest of justice require the issuance of a subpoena in order to access information held by a party other than the Purchaser with respect to any hearing by the Commission pursuant to either Section 6 or Section 7 of these Rules and Regulations, the Purchaser or the executive director may request the Commission to seek the assistance of an appropriate subpoena-issuing authority.

## SECTION 8 — PAYMENT OF OUTSTANDING FEES, INTEREST OR PENALTIES

### 8.01 STANDARDS GOVERNING PAYMENT OF THE TRANSFER FEE

- (1) Once the Commission has determined, at a hearing held pursuant to Section 7.03 of these Rules and Regulations, that the Fee is due relative to the transfer of a particular Real Property Interest, it shall under no circumstances issue a waiver of this Fee.

Purchasers of commercial property shall in every instance pay the Fee in full at the Time of Transfer. Residential purchasers may request at this hearing that they be permitted to defer payment of a portion of the Fee, or pay a portion of the Fee in increments rather than in a single sum. Either arrangement must be approved by both the Commission and the appropriate town advisory board(s) at a hearing, and shall be permitted only in extraordinary circumstances. The Commission need not call another hearing to consider any such payment plan and may incorporate the matter into the existing hearing, but a separate hearing shall be called by the appropriate town advisory board(s).

Purchasers must pay at the Time of Transfer at least the larger of either of the following: (a) fifty (50%) percent of the total Fee due; or (b) \$2000. An interest rate shall be fixed at the Time of Transfer and shall be applied thereafter to the Purchaser's declining balance, computed by adding 5.0 to the prevailing Wall Street Journal prime rate at the Time of Transfer (except in the case of an "m" purchase, in which case the interest rate shall be equal to the prevailing prime rate).

- (2) In no event shall the complete payment of the Fee be deferred beyond the earlier of either of the following: [a] twelve months from the Time of Transfer; or [b] the date of the subsequent transfer of the Real Property Interest, other than the transfer of a mortgage to an institutional lender. A lien shall be recorded against the Real Property Interest in the Dukes County registry of deeds until the Fee is paid in full. Purchasers shall also sign a promissory note with the Land Bank outlining the terms and conditions of the repayment; a sample note appears as Exhibit G.

### 8.02 STANDARDS GOVERNING THE PAYMENT OF PENALTIES AND INTEREST

Accumulated interest and/or penalties may be waived by vote of the Commission and the appropriate town advisory board(s) at a hearing. This shall only occur in the event of a Purchaser's financial hardship; or a Purchaser's good-faith mistake, provided that such mistake was based upon advice of counsel or Land Bank staff; or when other extraordinary circumstances exist justifying relief. Purchasers shall

be deemed to be suffering financial hardship *[a]* when the Real Property Interest which is the subject of the Fee is in default under an existing mortgage; or *[b]* when other liens have been recorded against the Real Property Interest. Extraordinary circumstances shall be deemed to have occurred if any of the following have occurred to the Purchaser or to the Purchaser's spouse, child or parent, which list shall be considered illuminative rather than exhaustive: *[a]* death; *[b]* catastrophic illness or permanent disability or any condition requiring custodial or semi-custodial care; and *[c]* in the case of a Purchaser or a Purchaser's spouse, loss of employment or a transfer of employment which if refused would have resulted in loss of employment.

Exhibit A

MARTHA'S VINEYARD LAND BANK FEE

PAID \$ \_\_\_\_\_

EXEMPT \$ \_\_\_\_\_

NO.	DATE	CERTIFICATION
-----	------	---------------

ASSESSED VALUE

[ ]

MARTHA'S VINEYARD LAND BANK COMMISSION  
167 Main Street Box 2057 Edgartown, MA 02539

# FORM LB1

## Affidavit Attesting To The True And Complete Purchase Price

To be submitted with: 1) deed and one copy to be recorded or registered and 2) either or both of the following: (a) a certified check or attorney escrow account check in the amount of the transfer fee due, and, if applicable, (b) Form LB2, Affidavit Claiming Basis For Exemption From Transfer Fee.

Instructions: You must provide all information in parts A, B and C. The Land Bank and Dukes County Registry of Deeds will complete parts D and E. **Please** use a typewriter or press firmly with a ball point pen.

**PART A. REAL ESTATE DESCRIPTION:** Town: \_\_\_\_\_ Tax Map No. \_\_\_\_\_ Parcel No. \_\_\_\_\_  
 County of Dukes County Registry of Deeds: Book \_\_\_\_\_ Page \_\_\_\_\_ Land Court Certificate of Title No. \_\_\_\_\_  
 Address or Location \_\_\_\_\_ Acreage \_\_\_\_\_  
 Present Use:  dwelling  business  vacant land  other (specify) \_\_\_\_\_  
 Amenity:  paved road  sewer  water  waterfront  water view  pre-1850 structure  abuts conservation

**PART B. GRANTEES/GRANTORS IDENTIFICATION:** Grantee's Legal Rep. \_\_\_\_\_  
 Name of all Grantees \_\_\_\_\_  
 Mailing Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Name of Grantors \_\_\_\_\_ State \_\_\_\_\_

**PART C. TRUE AND COMPLETE PURCHASE PRICE:** \$ \_\_\_\_\_

I, \_\_\_\_\_ do hereby certify, under the pains and penalties of perjury, that the purchase price reported above is the true and complete purchase price for the transfer of real property interest as described in Part A and between the parties named in Part B pursuant to Chapter 736 of the Acts of 1985 of the Commonwealth of Massachusetts and includes all considerations paid or transferred by or on behalf of the purchaser to the seller or his nominee, or for his benefit, for the transfer of any real property interest, including ...

- (a) all cash or its equivalent so paid or transferred;
- (b) all cash or other property paid or transferred by or on behalf of the purchaser to discharge or reduce any obligation of the seller;
- (c) 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;
- (d) 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 transfer);
- (e) 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; and
- (f) the difference between fair market value and actual consideration paid if the purchaser is neither a spouse or lineal descendent.

X \_\_\_\_\_  
(Signature of Grantee or Massachusetts attorney. All others must attach a power of attorney.)

\_\_\_\_\_  
(Date)

**PART D. FEE (No personal checks)**

**MARTHA'S VINEYARD LAND BANK**

PAID \$ \_\_\_\_\_  
 EXEMPT \$ \_\_\_\_\_

\_\_\_\_\_  
 No. Date Certification

**PART E. REGISTRY RECORD**

**DUKES COUNTY REGISTRY OF DEEDS**

Record Date \_\_\_\_\_  
 Book \_\_\_\_\_ Page \_\_\_\_\_  
 Registered \_\_\_\_\_  
 Document No. \_\_\_\_\_

MARTHA'S VINEYARD LAND BANK COMMISSION  
167 MAIN STREET BOX 2057 EDGARTOWN, MA 02539

# FORM LB 2

## Affidavit Claiming Basis For Exemption From Transfer Fee

(please print)

I \_\_\_\_\_ do hereby certify under the pains and penalties of perjury that the transfer of real property interest described in the attached **Form LB1. Affidavit Attesting to the True and Complete Purchase Price** is lawfully entitled to be exempt from the fee imposed by Section 12 of Chapter 736 of the Acts of 1985 of the Commonwealth of Massachusetts by reason of its being a (check one or more)...

- (a) Transfer to the government of the United States, the Commonwealth of Massachusetts, and any instrumentalities, agencies or subdivisions thereof.
- (b) Transfer which, without additional consideration, confirms, corrects, modifies or supplements a transfer previously made. Attach evidence of transfer previously made.
- (c) Transfer made as a gift without consideration. In any preceding 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 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, or 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.

**HOW IS THE GRANTEE RELATED TO THE GRANTOR?**

- husband     son     mother
- wife     daughter     father
- other (specify) \_\_\_\_\_
- Not a lineal descendant or lineal ancestor.

- (d) Transfer to the trustees of a trust in exchange for a beneficial interest received by the seller in such trust; distributions by the trustees of a trust to the beneficiaries of such a trust.
- (e) Transfer by operation of law without actual consideration, including but not limited to a transfer occurring by virtue of the death or bankruptcy of the owner of a real property interest.  Death     Bankruptcy     Other (specify) \_\_\_\_\_
- (f) Transfer made in partition of land and improvements thereto, under chapter two hundred and forty-one of the General Laws.
- (g) Transfer to any charitable organization as defined in clause Three of section five of chapter fifty-nine of the General Laws, or any religious organization, provided that the real property interests so transferred will be held by the charitable or religious organization solely for its public charitable or religious purposes.

1. Purchase Price:        \$ \_\_\_\_\_

2. Fair market value of any portion of real property interests to be held for non-charitable or non-religious purposes:        \$ \_\_\_\_\_

3. Value claimed to be exempt:  
(line 1 minus line 2)        \$ \_\_\_\_\_

- (h) Transfer to a mortgagee in foreclosure of the mortgage held by such mortgagee, or a transfer of the property subject to a mortgage to the mortgagee in consideration of the forbearance of the mortgagee from foreclosing said mortgage.
- (i) Transfer 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, as amended.
- (j) Transfer made to a stockholder of a corporation in liquidation of the corporation, or a transfer made to a partner of a partnership in dissolution of the partnership.
- (k) Transfer 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 the law.
- (l) Transfers of property, consisting in part of real property interests situated on Martha's Vineyard and in part of other property interests, to the extent that the property transferred consists of property other than real property situated in Dukes County; provided that the purchaser shall furnish the 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 transfer.
- (m) The first ~~three~~ <sup>\*four</sup> hundred thousand dollars of the purchase price of a transfer made to a purchaser who, or whose spouse at the time of transfer, has at no time prior to said transfer owned or possessed any real property interest as defined in section one either within or without Dukes County; provided that the purchaser makes the real property interest which is the subject of the transfer the purchaser's actual domicile within two years of the time of transfer, with the intention to remain permanently or for an indefinite time and without any certain purpose to return to a former place of abode; 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 subsequent transfer. The purchaser shall certify as to the foregoing, and the 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.

**IF THE PERSON CLAIMING NO PRIOR OWNERSHIP OF REAL PROPERTY INTEREST IS THE SPOUSE OF THE PURCHASER, PLEASE PROVIDE HIS OR HER NAME.**

**IMPORTANT:** In order to lawfully be entitled to the "m" exemption, the purchaser shall not have previously owned real property ANYWHERE, including Martha's Vineyard, other parts of Massachusetts, outside Massachusetts or outside the U. S. A.

(Signature of Grantee)

(Date)

**If signed by purchaser's legal representative, copy of power of attorney must be attached.**

DUKES COUNTY LAND BANK COMMISSION

**FORM LB 3**

**Affidavit Attesting To Non-Consumation Of Transfer**

To be submitted with original deed and both copies of FORM LB1 and, if applicable, FORM LB2.

PART A TRANSFER IDENTIFICATION: Town \_\_\_\_\_ Tax Map No. \_\_\_\_\_ Parcel No. \_\_\_\_\_

Dukes County Registry of Deeds: Book \_\_\_\_\_ Page \_\_\_\_\_ Land Court Certificate of Title \_\_\_\_\_

Purchaser's Name \_\_\_\_\_

Seller's Name \_\_\_\_\_

PART B CERTIFICATION

I, \_\_\_\_\_, hereby return the  
(Purchaser or Legal Representative)  
attached original deed with the certificate stamp attached thereto for cancellation and certify that the transfer, with respect to which such certificate was issued, has not been consumated and therefore request that the fee paid with respect to such transfer be returned to me in the amount of:

\$ \_\_\_\_\_

X \_\_\_\_\_  
(Purchaser) (Date)

If signed by purchaser's legal representative, copy of power of attorney must be attached.

\* \* \*  
(For office use only)

Date Received: \_\_\_\_\_

Disposition:

Refunded fee on \_\_\_\_\_ \$ \_\_\_\_\_  
(Date) (Amount)

Refund denied, reason: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature of Land Bank Commission Chairman or Designate)

MARTHA'S VINEYARD LAND BANK COMMISSION

**FORM LB 4**

**AFFIDAVIT REQUESTING REBATE**

To be submitted with original deed and FORM LB1, and executed FORM LB2

PART A **TRANSFER IDENTIFICATION:** Town: \_\_\_\_\_ Tax Map No. \_\_\_\_\_ Parcel No. \_\_\_\_\_

Dukes County Registry of Deeds: Book: \_\_\_\_\_ Page: \_\_\_\_\_ Land Court Certificate of Title \_\_\_\_\_

Purchaser's Name \_\_\_\_\_

Seller's Name \_\_\_\_\_

PART B **CERTIFICATION**

I, \_\_\_\_\_, hereby certify that  
(Purchaser or Legal Representative)

the above transfer was exempt from the transfer fee, as provided for in Chapter 736, Section 12. I have attached an executed LB2 form, and any other documentation as may be required by the Martha's Vineyard Land Bank Commission. I therefore request that the fee paid with respect to this transfer be returned to me in the amount of \$\_\_\_\_\_.

\$ \_\_\_\_\_

X \_\_\_\_\_  
(Purchaser) (Date)

If signed by purchaser's legal representative, copy of power of attorney must be attached.

\* \* \*  
(For office use only)

Date Received: \_\_\_\_\_

**Disposition:**

Refunded fee on \_\_\_\_\_ \$ \_\_\_\_\_  
(Date) (Amount)

Refund denied, reason: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature of Land Bank Commission Chairman or Designate)

MARTHA'S VINEYARD LAND BANK COMMISSION

167 Main Street Box 2057 Edgartown, MA 02539

FORM LB 5

Corporation, Partnership or Trust Transfer Certificate
GRANTEE DESCRIPTION OF THIS TRANSACTION

To be submitted by the Grantee with respect to transfers of interests in a corporation, a partnership or a trust holding any Real Property Interest on the Island Of Martha's Vineyard. Attach additional sheets if necessary. Attach copies of all documents which provide evidence of the facts set forth herein including, but not limited to, underlying agreements, schedules of beneficiaries, stock powers, certificates of transfer agents and certificates of limited partnership as applicable.

- 1. Does this transaction involve the transfer of any Real Property Interest held on the Island of Martha's Vineyard to or from:
(a) A corporation
(b) A partnership
(c) A trust
(d) A mortgagee
2. Is the transfer:
(a) distribution of assets of a corporation, partnership or trust?
(b) a transfer made to a corporation or partnership or a transfer to the trustees of a trust in exchange for a beneficial interest?
(c) a foreclosure of a mortgage or a transfer in lieu of foreclosure?
3. Identify the transferor(s) and transferee(s):

3A. Identify principal(s) of corporation or; partners of partnership or; beneficiaries of trust.

If the answer to Question 2(c) above is no, skip to Question 7.
If the answer to Question 2(c) above is yes, answer each of the following questions.

- 4. Identify the mortgagor(s):
5. State the amount of the outstanding mortgage being foreclosed:
6. Did the mortgagee hold the first priority lien position against the property?
7. State the amount and nature of the interest transferred:
8. State the consideration given in connection with the transfer(s):

Certification
(To be executed by the Grantee)

If signed by the Grantee's attorney at law, a copy of a power of attorney must be attached.

I, \_\_\_\_\_, hereby certify under the pains and penalties of perjury, that the information appearing on this Transfer Certificate is true and complete, to the best of my knowledge.

Signature

Title

Date

Name of corporation, partnership or trust

PROMISSORY NOTE

\$0,000.00

Edgartown, Massachusetts

date

FOR VALUE RECEIVED, \_\_\_\_\_ of \_\_\_\_\_,

Massachusetts ("Debtor") promises to pay to the **MARTHA'S VINEYARD LAND BANK COMMISSION**, a corporate body politic established by Chapter 736 of the Acts of 1985, as amended, with a principal place of business at 167 Main Street, Edgartown, Massachusetts, or order (hereinafter the "Noteholder"), the sum of \_\_\_\_\_ DOLLARS (\$ ,000.00) with interest on the unpaid principal balance from the date of this Note, until paid, at a rate of \_\_\_\_\_ per cent (\_\_\_\_%) per annum. Principal and interest shall be payable by check to the Noteholder at Post Office Box 2057, Edgartown, Massachusetts 02539, or at such other place as the Noteholder may designate in writing, in consecutive monthly installments of \_\_\_\_\_ DOLLARS (\$0,000.00) on the \_\_\_\_\_th day of each month beginning \_\_\_\_\_, 20\_\_\_\_. Such monthly installments shall continue until the entire indebtedness evidenced by this Note is fully paid, except that any remaining indebtedness, if not sooner paid, shall be due and payable on \_\_\_\_\_, 20\_\_\_\_.

At the option of the Noteholder, the entire principal balance of this Note shall become immediately due and payable without further notice or demand, and notwithstanding any prior waiver of any breach or default or other indulgence, at any



Debtor shall be liable for all expenses of same, including all reasonable attorney's fees.

Presentment, notice of dishonor and protest are hereby waived by all makers, sureties, guarantors and endorsers hereof. This Note shall be the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

This instrument is executed as a sealed instrument on the date first above written.

Witness

[name of debtor]

\_\_\_\_\_

\_\_\_\_\_

