

**THE SUFFOLK COUNTY LANDBANK CORP**  
**REAL PROPERTY DISPOSITION POLICY**

**A. DEFINITIONS.**

**As used herein, the following terms shall have the meaning set forth below.**

- a. "Board" shall mean the Board of the Suffolk County Landbank Corporation.
- b. "Acquisition" or "Acquire" shall mean the transfer to The Suffolk County Landbank Corporation of title, tax lien or any other beneficial interest in real property in accordance with this Policy, and the Laws of the State of New York.
- c. "Disposition of Real Property" or "Dispose of Real Property" shall mean the transfer from The Suffolk County Landbank Corporation of title, tax lien or any beneficial interest in Real Property in accordance with this Policy, and the Laws of the State of New York to any individual or entity.
- d. "Policy" shall mean this Policy, as amended from time to time by resolution of the Board.
- e. "SCLBC" shall mean The Suffolk County Landbank Corporation, a Land Bank Corporation organized under New York State Not-For-Profit Corporation Law.
- f. "N-PCL" shall mean the New York Not-For-Profit Corporation Law, as amended from time to time.
- g. "Land Bank Act" shall mean Article 16 of the New York Not-For-Profit Corporation Law, as amended from time to time.
- h. "PAL" shall mean the New York Public Authorities Law, as amended from time to time.
- i. "Real Property" shall mean lands, lands under water, structures and any and all easements, air rights, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise, and any and all fixtures and improvements located thereon.
- j. "Fair Market Value" shall mean the amount for which property would sell on the open market if put up for sale, taking into consideration comparable sales of similar

property in the area to determine market value, adding or deducting amounts based on differences in quality and size of the property. Fair Market Value shall also include, but not be limited to the potential cost of rehabilitation and/or environmental remediation.

#### **B. Disposition of Property by The Suffolk County Landbank Corporation**

The disposition of real property by the Suffolk County Landbank Corporation, herein referred to as the SCLBC, shall be governed by the general guidelines set forth in this Policy, and shall at all times be consistent with the provisions of Article 16 of the NYS Not-for-Profit Corporation Law, applicable provisions of NYS Public Authorities Law and NYS Not-for-Profit Corporation Law, and all applicable Federal, State, and local laws, rules, regulations and ordinances. This Policy shall apply to any disposal, transfer or conveyance of real property of the SCLBC, including any real property interest, complete or inchoate, of the SCLBC, except for a property interest that secures a loan or other financial obligation of another party. Another policy of the SCLBC governs the disposition of personal property.

#### **C. Alignment with SCLBC mission**

- a. Properties shall be disposed of in a manner that supports the mission of the SCLBC and is consistent with the comprehensive plans of the jurisdictions in which they are located.

#### **D. Disposition of Real Estate Interests**

- a. The SCLBC may convey, exchange, sell, transfer, lease as lessor, grant, release and demise, pledge any and all interests in, upon or to real property of the SCLBC.

#### **E. Board Approval**

- a. All disposition of real property shall be approved by the SCLBC's Board of Directors prior to conveyance of title. The SCLBC shall not sell, mortgage, or lease any real property unless authorized by a majority vote of the Board as required pursuant to N-PCL § 1605 (2)(i)(5). The terms of any contract or agreement concerning the sale, lease, license, easement, encumbrance, or other alienation of any interest in real property of the SCLBC, shall be approved by the Board.

## **F. Ownership by the SCLBC**

- a. Pursuant to § 1609(a) of the Land Bank Act, the SCLBC shall hold in its own name all real property acquired by the SCLBC irrespective of the identity of the transferor of the property.

## **G. Designation of Contracting Officer / Duties of Contracting Officer**

- a. Except as otherwise provided herein, the “Contracting Officer” shall be responsible for the disposition of real property owned by the SCLBC and shall be responsible for the SCLBC’s compliance with, and enforcement of, this Policy. The Executive Director of the SCLBC is hereby designated as the Contracting Officer. As the Contracting Officer, the Executive Director has responsibility and authority for carrying out the directives of the Board with regard to disposition of property. All contracts shall be executed in the name of the SCLBC.

## **H. Authorized Signatory**

- a. The Board delegates to the Executive Director of the SCLBC the authority to enter into and execute agreements, instruments of conveyance and all other related documents pertaining to the conveyance of real property by the SCLBC. In the event that the Executive Director is unavailable, unable, or unwilling to carry out this responsibility, the Chief Executive Officer shall have authority to act in this capacity.

## **I. Disposition Methods**

- a. The SCLBC may dispose of real property, or any interest in real property, by the following methods:
  - i. Sealed Bid
  - ii. Public Auction;
  - iii. Negotiation;
  - iv. Sale by Request for Proposal;
  - v. Transfer to a government entity;
  - vi. Conveyance of a partial interest by lease, license, easement, or other agreement; or
  - vii. Disposing of Specified Purpose Property in accordance with the instrument conveying such property to the SCLBC.

## **J. Disposal of Real Property**

- a. In each and every transfer of real property the SCLBC shall require good and valuable consideration in an amount determined by the SCLBC in its sole discretion. The SCLBC will consider all of the following in determination of consideration for each property:
  - i. The fair market value of the property if no environmental remediation were necessary.
  - ii. The Property Costs.

“Property Costs” shall mean the aggregate costs and expenses of the SCLBC attributable to the specific property being sold, including costs of acquisition, maintenance, repair, demolition, marketing, legal expenses of the property and indirect costs of the operations of the SCLBC allocable to the property.
  - iii. Expected costs of remediation for environmentally challenged properties.

The consideration to be provided to the SCLBC by the Transferee may take the form of monetary payments and secured financial obligations, deferred financing, performance of contractual obligations, imposition of restrictive covenants, or other obligations and responsibilities of the Transferee, or any combination thereof, and such other forms of consideration as are consistent with state and local law. The SCLBC may consider alternative financing options (i.e., providing a mortgage and promissory note) as a method of disposition in any transactions.

- b. Appraisal: Prior to disposal, an appraisal shall be made by an independent appraiser of the value of any interest in real property. Said appraisal shall be in the SCLBC’s record of the transaction for the Property.
- c. Available Procedures for Disposal of Real Property
  - i. Sealed Bid: The SCLBC may dispose of any real property and appurtenances, or interest therein, to any qualified purchaser by sealed bids provided that:
    1. The public advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on

such terms and

conditions as shall permit full and free competition consistent with the value and nature of the property; and

2. All bids shall be publicly disclosed at the time and place stated in the advertisement; and
3. The award shall be made with reasonable promptness by notice to the responsible bidder whose bid conforms to the invitation for the bid and is most advantageous to the SCLBC, after considering price and other relevant factors; provided that all bids may be rejected when it is in the SCLBC's interest to do so.

ii. Public Auction: The SCLBC may dispose of real property and appurtenances thereto by auction:

1. By publicly advertising the auction, publicly disclosing all bids, and award of the property in accordance with the three procedures required for sealed bidding as set forth in Subparagraphs J(c)(i)(1), (2), and (3) of this Policy.

Notice: The SCLBC shall publish a notice of the auction, the terms of the auction, and the qualifications for bidders in a manner designed to obtain as much competition as feasible under the circumstances.

iii. Negotiation:

1. The SCLBC may dispose of real property by negotiation and without publicly advertising for bids as **is feasible**.

iv. Sale by Request for Proposal: The SCLBC may dispose of any real property and appurtenances, or interest therein, to any qualified purchaser via Sale by Request for Proposal ("RFP") provided that:

1. The public advertisement of the RFP shall be made at such time prior to the disposal or contract, through such methods, and on such terms  
  
and conditions as shall permit full and free competition

- consistent with the value and nature of the property; and
2. All proposals shall be publicly disclosed at the time and place stated in the advertisement; and
  3. The award shall be made with reasonable promptness by notice to the responsible proposer whose proposal is most advantageous to the SCLBC, after considering price, scope of services, development proposed, qualifications, and other relevant factors; provided that all proposals may be rejected when it is in the SCLBC's interest to do so.
- v. Transfers to Governmental or Public Entities: The SCLBC may convey real property to governmental or public entities at satisfactory terms of disposal as determined by negotiation.

Where the terms and conditions of the transfer require that the ownership and use of the asset will remain with the governmental or public entity, real property may be disposed of for less than fair market value.

- d. Disposal of Property for Less than Fair Market Value
- i. The SCLBC may dispose of real property for less than fair market value subject to the **review and approval of the** Board.
- e. Information to be provided to the Board: In the event that a real property transfer **or sale** is proposed, the following information must be provided to the Board:
- i. A full description of the asset; and
  - ii. An appraisal of the fair market value of the asset, and any other information establishing the fair market value sought by the Board; and
  - iii. A description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits to the communities in which the asset is situated as required by the

transfer; and

- iv. A statement of the value received compared to the fair market value
- v. The names of other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used, **if applicable**.

#### **K. Option to Purchase Real Estate**

- a. The SCLBC may grant an option to purchase real estate for a specified percentage of the purchase price with a negotiated time frame to be determined by the SCLBC. This payment will be credited to the sale price at closing. If closing does not occur **within the agreed-upon time frame**, the fee shall be forfeited. All option agreements are subject to all policies and procedures of the SCLBC pertaining to property transfers.

#### **L. Planned Disposition Strategy**

- a. A subsequent use that furthers community development objectives, along with an estimated schedule for implementation, must be identified prior to disposition.

For conveyances that are subject to a development proposal, the SCLBC will require potential Transferees to submit a plan that includes, at a minimum, the following:

- i. Project description, including ultimate use of property
- ii. Development schedule
- iii. Investment plan including projected development costs and sources of funding
- iv. Experience of Transferee in undertaking similar projects
- v. References

All tax incentives and financing necessary for the development to be completed must be committed prior to actual disposition. The maintenance requirements imposed by N-PCL § 1608(d).

All Transferees shall be required to comply with all terms of the approved development proposal, the purchase offer, the town's zoning ordinance and building code, and the laws and/or ordinances of all other agencies that may

have jurisdiction.

#### **M. Structure of Conveyances**

- a. Transactions shall be structured in a manner that permits the SCLBC to enforce recorded covenants or conditions upon title pertaining to development and use of the property for a specified period of time. Such restrictions may be enforced, in certain cases, by means of a reverter clause in the deed conveying title to a Transferee, and/or reliance on subordinate financing held by the SCLBC.

#### **N. Qualifications of Transferee**

- a. Individuals and entities seeking to acquire real property from the SCLBC, or to enter into transaction agreements with the SCLBC, will be required to provide such information as may be requested by the SCLBC, including but not limited to the legal status of the Transferee, its organizational and financial structure, and its prior experience in similar property development or management.

The SCLBC deems it to be in the best interest of the County of Suffolk to convey real property to individuals and entities who will be responsible property owners. Prior to transferring real property, the SCLBC may review Suffolk County records, town code enforcement and other records to determine whether a potential Transferee is disqualified under this Policy. These provisions shall apply to all Transferees including purchasers and lessees.

Individuals and entities shall be prohibited from acquiring ownership or property rights from the SCLBC if they:

- i. have engaged in fraudulent activity in connection with the sale of County- owned or SCLBC- owned property;
- ii. have lost real property through County tax foreclosure proceedings within the previous five years;
- iii. own property within Suffolk County for which taxes are not current;
- iv. have had a sale cancelled for cause by Suffolk County within the previous three years;

- v. have been held in contempt of a court order for failure to abate code violations within the previous five years;
- vi. have unsatisfied judgments as a result of code enforcement actions in any town;
- vii. own property within Suffolk County that is in violation of town codes
- viii. currently hold or have held a position of Suffolk County or SCLBC employment currently or within the preceding two year period
- ix. are currently or were formerly an officer of a political party

A material failure to perform in prior transactions with the SCLBC shall also render an individual or entity ineligible to purchase of real property from the SCLBC. Individuals and entities that were the prior owners of real property at the time of tax foreclosure which transferred title to the SCLBC shall be ineligible to be the Transferee of such property from the SCLBC, except that the Board of the SCLBC in its sole discretion may approve a short- term rental agreement with a prior owner. Parties that are not able to demonstrate sufficient experience and capacity to perform in accordance with the requirements of the SCLBC shall be ineligible to purchase real property from the SCLBC.

The provisions cited in this section shall apply to individuals and/or any entities controlled by the same individuals.

The SCLBC reserves the right to independently investigate and consider the Transferee's experience and business activities in other jurisdictions, as well as to consider references, both those that are submitted and others that may be solicited by the SCLBC. All determinations of the eligibility or qualification of any Transferor shall be at the sole and absolute discretion of the SCLBC.

**O. Conveyance to Tax-Exempt Entity**

- a. The SCLBC may give preference to proposals to transfer real property into private ownership for taxable uses. However, given the unique nature of some properties, the SCLBC may consider a tax-exempt use that supports the mission of the SCLBC and is in congruence with municipal strategies, goals and objectives. Except in the discretion of the Board for overriding charitable, educational and other public interests, in a conveyance to a

non-governmental tax-exempt organization, the Transferee shall waive its tax-exempt status for five years and agree to pay property taxes for that period of time, unless the Transferee currently owns a tax-exempt property within 500 feet of the real property acquired from the SCLBC. The Transferee shall further agree not to transfer, re-sell or convey the subject premises to a tax-exempt organization for a period of five (5) years from the date of the recording of the deed from the SCLBC. This covenant shall be contained in the deed from the SCLBC to the Transferee.

**P. Environmental**

- a. Unless otherwise approved by the Board, the Transferee shall be solely responsible for performing and conducting its own due diligence as to the physical and environmental condition of the real property being conveyed. The SCLBC shall supply the Transferee with copies of all environmental reports (the “Environmental Reports”) it has in its possession in regard to the real property conveyed. Transferee shall accept the real property in “as is” condition, and shall agree to assume and undertake any and all liability and expense resulting from the presence of hazardous substances or pollutants of any kind in, on, or beneath the real property, and/or removal or other remediation of any such hazardous substances or pollutants, except to the extent that the presence or release of any such hazardous substances or pollutants has resulted from or arisen out of actions of the SCLBC, its agents, employees or contractors.

**Q. Lead-Based Paint and/or Lead-Based Paint Hazards**

- a. The SCLBC shall comply with the disclosure requirements of the Residential Lead- Based Paint Hazard Reduction Act (Title X) passed by Congress in 1992 and the regulations which were issued to implement said legislation, in the conveyance of all real property constructed prior to 1978 containing one or more residential dwelling units, unless such property is specifically excluded from the rule. The SCLBC shall disclose all known lead-based paint and/or lead-based paint hazards and further provide any available reports of lead-based paint testing regarding residential dwellings covered under this rule. Transferees shall have the opportunity, for a 10- day period, to conduct

a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards, at their own expense. By mutual agreement of the SCLBC and Transferee, the time period may be shortened or lengthened. The Transferee may waive the inspection opportunity.

#### **R. Access Insurance**

- a. The SCLBC may grant an access or license agreement to permit a Transferee to conduct due diligence activities or take occupancy prior to conveyance of title, or for such other purposes as deemed necessary to carry out the purpose of the planned disposition. The SCLBC may also enter into a lease agreement. During a license period and/or lease term, the Transferee shall agree to defend, indemnify and hold the SCLBC and Suffolk County harmless from any and all claims for bodily injury or property damage occurring or alleged to have occurred at the subject property. Transferee shall insure the property with liability insurance with such minimum coverage limits as may be approved by the SCLBC. All such insurance policies shall be issued in the name of the Transferee, the SCLBC and Suffolk County as additional insured, and a copy of a bona fide certificate of insurance evidencing the coverage

provided in the policy shall be delivered by the Transferee to the SCLBC on or before the date of commencement of the license period.

#### **S. Boundary Lines**

- a. The SCLBC may grant and accept easements to resolve boundary line title tissues, including building encroachments between adjoining parcels and fence encroachments. The Executive Director may authorize boundary line agreements and driveway agreements with the owners of parcels adjacent to Land-Bank owned parcels, without conveyance of ownership. Consideration for boundary line agreements may be set at \$1 (payment waived).

#### **T. Disposition of Proceeds of Sale**

- a. Any proceeds from the sale or transfer of real property by the SCLBC shall be retained, expended, or transferred by the SCLBC as determined by the Board in the best interests of the SCLBC and in accordance with the New

York State Land Bank Act, the Memorandum of Understanding with Suffolk County, and this policy.

#### **U. Inventory of Real Property Dispositions**

- a. Pursuant to N-PCL §§ 1609(b) and 1609(g), the SCLBC shall maintain and make available for public review and inspection a complete inventory of all real property dispositions. The inventory shall include a complete copy of the sales contract including all terms and conditions including, but not limited to, any form of compensation received by the SCLBC or any other party which is not included within the sale price. Within one week of the disposition of any parcel of real property, the SCLBC shall list the parcel in the inventory. The inventory records shall remain available for public inspection indefinitely.

Pursuant to N-PCL §513, the SCLBC shall cause accurate accounts of its Specified Purpose Property separate and apart from the accounts of the SCLBC's other assets. Unless the terms of the particular instrument conveying the Specified Purpose Property provide otherwise, the SCLBC treasurer shall make an annual report to the Board concerning such property, the use made, and the income thereof.

#### **V. Retention of Records**

- a. Copies of all real property disposition contracts shall be retained indefinitely by the SCLBC. Copies of contracts under this section shall be kept as a part of the SCLBC's disposition file and shall be incorporated into the disposition inventory as set forth in Section 21 of this policy. Copies may be kept in original form, electronically, or in both forms.

#### **W. Annual Reports**

- a. PAL §2896(3) Property Report

The SCLBC shall publish annually a report listing all property of the SCLBC, as required pursuant to PAL §2896(3)(a). Such report shall include a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the SCLBC and the name of the purchaser for all such property sold by the SCLBC during such period. The SCLBC shall deliver copies of such report to the Comptroller of the State of New York, the Director of the Budget of State of New York,

the Commissioner of the New York State Office of General Services, the New York State Legislature, and the Authorities Budget Office as required pursuant to PAL §2896(3)(b).

b. PAL §2800 Comprehensive Report

Within another annual report that the SCLBC is required to provide to County officials and to the NYS Authorities Budget Office within ninety days after the end of its fiscal year pursuant to PAL §2800(2)(a), the SCLBC shall include, among several other items, a listing and description of each parcel of real property having an estimated fair market value in excess of fifteen thousand dollars (\$15,000.00) that the SCLBC has acquired or disposed of during its fiscal year, including the price or other consideration received or paid and the name of the purchaser or seller.

c. Specified Purpose Property

Pursuant to N-PCL §513, the SCLBC shall cause accurate accounts of its Specified Purpose Property separate and apart from the accounts of the SCLBC's other assets. Unless the terms of the particular instrument conveying the Specified Purpose Property provide otherwise, the SCLBC treasurer shall make an annual report to the Board concerning such property, the use made, and the income thereof.

**X. Exceptions to Policy**

- a. Any transaction that requires an exception to this policy governing real property disposition shall require the approval of the SCLBC Board, with a description of the exception and the reasons therefor.

**Y. Annual Review and Amendments of Policy**

- a. This policy is subject to modification and amendment at the discretion of the Board in accordance with the PAL §§2800 and 2896 and N-PCL §520. The policy shall be reviewed and approved annually by the SCLBC Board. On or before March 31st of each year, the Policy most recently reviewed and approved including the name of the Contracting Officer shall be filed with the Comptroller of the State and posted on the SCLBC's website.