

FIXER UPPER COUNTY EDITION: HOW LAND BANKS CAN HELP
SAVE ILLINOIS'S SMALL TOWNS

LAUREN EITEN*

While still in the midst of a global pandemic, it is hard to predict what will be the long-term impacts. Illinois communities, particularly smaller towns outside of Chicagoland, are likely to see an increase in abandoned properties. Local governments need tools to save their towns.

One such tool is a land bank. Land banks are public entities created in order to acquire vacant and abandoned properties unwanted by the private market due to overburdened tax liens. Land banks extinguish liens and rehab and sell when possible or in some cases demolish the property. Illinois attempted to pass state-enabling legislation in 2009 but was ultimately unsuccessful. Since then, a handful of land banks have popped up in Illinois, including the Cook County Land Bank Authority. A major concern, however, is the lack of a permanent financing structure. Land banks may be unable to meet their communities' needs.

This Note recommends Illinois passes state-enabling legislation to give existing and future land banks the power to be more flexible, financially stable, and responsive to their communities' needs.

TABLE OF CONTENTS

I.	INTRODUCTION.....	102
II.	BACKGROUND.....	104
III.	ANALYSIS.....	111
	A. <i>Comparing Illinois's Land Bank System with Michigan's and Ohio's</i>	111
	1. <i>Michigan and Ohio</i>	111
	2. <i>Cook County Land Bank Structure</i>	113
	3. <i>South Suburban Land Bank and Development Authority</i>	115
	4. <i>Downstate Troubles</i>	116

* J.D. Candidate 2022, University of Illinois College of Law; M.A. 2013, University of Illinois Urbana-Champaign; B.A. 2011, University of Illinois Urbana-Champaign. Thank you to Professor Laurie Reynolds for your help and guidance. Thank you to Brent Denzin, Matt Kreis, and Mike Davis who were invaluable resources. Thank you to everyone who took the time to be interviewed for this Note. I appreciate you sharing your insight. Thank you to the members of the *University of Illinois Law Review* for your careful editing and helpful suggestions. Thank you to the town that raised me: Peru, Illinois. And a huge thank you to my family for your unwavering support and encouragement.

B.	<i>Comparing Different Funding Mechanisms</i>	121
1.	<i>Delinquent Tax</i>	121
2.	<i>Tax Remittance</i>	122
3.	<i>Value Capture</i>	122
4.	<i>Fees</i>	124
5.	<i>Bonds</i>	124
6.	<i>Private Funding</i>	125
C.	<i>Preemptive or Grandfathered Legislation</i>	126
IV.	RECOMMENDATION.....	127
A.	<i>Land Bank Definition</i>	129
B.	<i>A Stable and Permanent Financing Structure</i>	131
C.	<i>Streamlined Foreclosure Processes</i>	134
V.	CONCLUSION	136

I. INTRODUCTION

Located on the Illinois River, Peru, Illinois has seen its fair share of industries. From coal and zinc mining, to the construction of the Illinois-Michigan Canal in the 1800s, to manufacturing in the 1900s, to retail in the 2000s, Peru, along with its sister city of LaSalle, has been the heart of the Illinois Valley in north-central Illinois.¹

Peru’s population first took a hit after the closing of Westclox, a leading alarm clock manufacturer, in 1980.² In its heyday, Westclox employed more than 4,000 individuals.³ Subsequently, the Peru Mall became the largest employer in the area with approximately 800 employees.⁴ While the City of Peru boasts on its website that the mall “features over 50 name-brand stores,”⁵ its directory tells a different story, listing only about half that many stores.⁶ In August 2020, the city announced it had reached an agreement with a developer to tear down the majority of the mall and convert the space into an apartment complex and a smaller outdoor mall.⁷

1. *Illinois Valley History*, ILL. VALLEY CHAMBER OF COM. & ECON. DEV., <https://www.ivaced.org/illinois-valley-history> (last visited Jan. 14, 2022) [https://perma.cc/PRF4-JWP9].

2. *Westclox Chronology*, CLOCKHISTORY.COM, <https://clockhistory.com/westclox/company/dates/index.html> (last visited Jan. 14, 2022) [https://perma.cc/A3QE-C5VX].

3. *Id.* (After WWII through 1956, Westclox employed around 4,000, including the author’s grandpa).

4. *Largest Employers*, ILL. VALLEY CHAMBER OF COM. & ECON. DEV., <https://www.ivaced.org/largestemployers> (last visited Jan. 14, 2022) [https://perma.cc/R626-XBY8].

5. *Peru Retail*, CITY OF PERU, <https://developperu.com/retail/> (last visited Jan. 14, 2022) [https://perma.cc/8TME-C6KT].

6. *Directory*, PERU MALL, <https://www.perumall.com/directory/> (last visited Jan. 14, 2022) [https://perma.cc/DF28-36C5] (Applebees is located outside the Mall).

7. Rick Koshko, *Peru Mall Redevelopment Gets City Council Approval*, WCMY 1430 AM NEWS (Aug. 18, 2020, 9:13 AM), <https://www.1430wcmcy.com/2020/08/18/peru-mall-redevelopment-gets-city-council-approval/> [https://perma.cc/R2QH-74AJ].

Peru's population in 2020 was 9,852 and is estimated to drop to 9,495 by 2025.⁸ In 2020, Peru had 502 vacant housing units and is estimated to have 685 in 2025.⁹ This estimate is likely to be further impacted by COVID-19.¹⁰ With a declining population and an increase in vacant properties, Peru is ripe for a land bank.¹¹

A land bank is a public entity created to acquire vacant, abandoned, and tax-delinquent properties unwanted by the private market due to overburdened tax liens.¹² Land banks work to make those properties marketable by extinguishing liens, rehabbing when necessary, and in some cases demolishing the property.¹³ Land banks then either sell the property to a family or developer, create a green space, or transfer to a redevelopment authority.¹⁴

Unlike two of its neighbors, Ohio and Michigan, Illinois does not currently have state-enabling land bank legislation.¹⁵ One legislative proposal died in committee in 2011.¹⁶ But even without legislation, Illinois currently has five land bank authorities that exercise similar powers to those of the Michigan and Ohio land banks when it comes to clearing tax debt and liens.¹⁷ Unlike its Michigan and Ohio counterparts, however, Illinois land banks lack a funding pipeline.¹⁸

This Note argues that Illinois should adopt enabling legislation so that current land banks can fully address their communities' needs. Because of unstable revenue streams, many communities in Illinois, particularly smaller communities, lack access to land bank authorities.¹⁹ This leaves them without resources to address a growing problem with vacant and abandoned properties.²⁰ As Emory University professor and land bank expert Frank Alexander, wrote, "[i]f there are further declines in populations in rural areas those small communities which lose or have already lost reasonable prospects of stable markets will need to have

8. *Peru, IL*, ILL. VALLEY CHAMBER OF COM. & ECON. DEV., <https://www.ivaced.org/> (last visited Jan. 14, 2022) [<https://perma.cc/UA4E-EM9T>] (choose "Illinois Valley Communities" from the Economic Development dropdown; then choose "Peru, IL").

9. *Id.*

10. *Id.*

11. *Id.*

12. FRANK S. ALEXANDER, *LAND BANKS AND LAND BANKING* 10 (2d ed. 2015).

13. *Id.* at 36.

14. *Id.* at 43.

15. Galen Newman et al., *Smarter Shrinkage: A Neighborhood-Scaled Rightsizing Strategy Based on Land Use Dynamics*, 2 J. GEOVISUALIZATION & SPATIAL ANALYSIS 1, 5 (2018).

16. H.R. 1195, 96th Gen. Assemb., Reg. Sess. (Ill. 2009).

17. COOK COUNTY, ILL., CODE OF ORDINANCES ch. 103 (2013); Vermilion County, Ill., Intergovernmental Agreement to Establish the Central Illinois Land Bank Authority (Mar. 10, 2020) [hereinafter CILBA]; Winnebago County, Ill., Intergovernmental Agreement to Establish the Northern Illinois Land Bank Authority (Jan. 14, 2019) [hereinafter NILBA]; Cook and Will Counties, Ill., Intergovernmental Agreement to Establish the South Suburban Land Bank and Development Authority (Sept. 25, 2012) [hereinafter SSLBDA]; Lake County, Ill., Intergovernmental Agreement to Establish the Lake County Land Bank Authority (2018) [hereinafter LCLBA].

18. Zoom Interview with Brent Denzin, Legal Couns., Cook Cnty. Land Bank Auth. and S. Suburban Land Bank & Dev. Auth. (Oct. 9, 2020).

19. *Id.*

20. *Id.*

options that are more responsible than [sic] simply suggesting that the last person to leave cut off the lights.”²¹ Abandonment cannot be the best we can do.

Part II of this Note will provide a general history of land banks, the history of Illinois land banking legislation, and an overview of the existing Illinois land banks. Part III will analyze different funding mechanisms to recommend what features should be included in a final Illinois bill. It will also suggest statutory features that will ensure that “downstate” communities are not locked out of land bank resources. There is strong disagreement throughout Illinois regarding the use of the word downstate but due to its extreme popularity in the media and lexicon, it will be utilized in this Note.²² Further, this Note will analyze whether the legislation should be preemptive or grandfathered. Preemptive legislation, as defined by the author, refers to legislation which would override all existing land bank legislation throughout the state, more or less, starting over. Grandfathered legislation would attempt to build upon existing legislation as opposed to override or conflict. Part IV recommends that Illinois pass grandfathered state-enabling legislation in order to give the existing and future Illinois land banks the power to be more flexible, financially stable, and responsive to their communities’ needs.

II. BACKGROUND

Land banks are public entities created in order to acquire vacant, abandoned, and tax-delinquent properties unwanted by the private market due to overburdened tax liens.²³ First, it is important to note that vacancy, abandonment, and tax-delinquency are not synonymous.²⁴ Vacancy is, more or less, an unoccupied property; in contrast, an abandoned property is one where the owner has ceased to invest any resources into the property.²⁵ Abandoned properties can still be occupied.²⁶ Tax delinquency occurs when the owner fails to pay property taxes.²⁷ The U.S. Census Bureau estimates there are about 14 million vacant housing units across the nation; most are also abandoned and tax-delinquent.²⁸

Land banks work to make vacant, abandoned, and tax-delinquent properties marketable by extinguishing liens, rehabbing when necessary, and in some cases demolishing the property.²⁹ To oversimplify the process, land banks: (1) acquire

21. ALEXANDER, *supra* note 12, at 113.

22. Logan Jaffe, *Defining “Downstate” Illinois*, PROPUBLICA ILL. (Oct. 20, 2017, 6:00 AM), <https://www.propublica.org/article/defining-downstate-illinois> [<https://perma.cc/NMB4-FB8P>]. For purposes of this Note, downstate refers to all areas outside Chicago and the collar counties, even though the author acknowledges that Winnebago County is West of Chicago.

23. ALEXANDER, *supra* note 12.

24. *Id.* at 14.

25. *Id.*

26. *Id.*

27. *Id.*

28. STEPHEN P. GASTEYER, RACHEL JOHANSEN, & VICKI C. KRUEGER, NAT’L ASS’N OF REALTORS, *LAND BANKS: INVESTING IN COMMUNITIES, BANKING ON REVITALIZATION* 27 (2015).

29. *See* ALEXANDER, *supra* note 12, at 36.

the title; (2) eliminate the debts; and (3) finally, transfer the property to new owners aligned with their needs and priorities.³⁰ A common priority for most, if not all, land banks is to increase surrounding property values.³¹ Studies have shown that vacant properties tend to decrease surrounding housing values by 2–3%.³² In Cleveland, the impact could be as high as a 5% decrease.³³ Land banks also have the additional goals to reduce blight, develop more affordable housing, and create additional green space.³⁴

Illinois has struggled to increase affordable housing throughout the state.³⁵ In 2003, the Illinois General Assembly passed the Illinois Affordable Housing Planning and Appeal Act, which requires cities with at least 1,000 residents and less than 10% affordable housing to submit affording housing plans to a newly created state appeals board.³⁶ The Illinois Housing Appeals board was not fully appointed until 2012 and has yet to hear a case.³⁷ Many applicable municipalities simply refuse to comply, citing home rule authority.³⁸ In 2020, legislation was introduced, which would limit home rule authority under this Act but the legislative session adjourned without a vote on it.³⁹

As of January 2018, there were approximately 170 land banks throughout the country.⁴⁰ In most states, land banks are created by local ordinance in accordance with state-enabling legislation and can either be created as separate authorities, usually called land bank authorities, or established as a program within an existing entity, such as a redevelopment or housing authority.⁴¹ Frank Alexander advises state and local governments to establish land banks as separate entities if possible.⁴² This separation, ideally, will prevent land banks from being tied to certain elected officials and will prevent commingling of land bank revenues with those of other government programs.⁴³

30. *Id.* at 10.

31. *Id.* at 68.

32. GASTEYER ET AL., *supra* note 28, at 55.

33. *Id.*

34. ALEXANDER, *supra* note 12, at 14–15, 43.

35. Natalie Moore, *With No Oversight, Illinois Cities Flout State Law That Encourages Affordable Housing*, WBEZ CHI. (Jan. 21, 2021, 6:00 AM), <https://www.wbez.org/stories/with-no-oversight-illinois-cities-flout-state-law-that-encourages-affordable-housing/7d298f69-113e-4541-9132-9af59d6b3667> [https://perma.cc/2SNT-UV52].

36. Currently, 46 municipalities meet this criterion. *Id.*

37. *Id.*

38. *Id.* In Illinois, municipalities with a population greater than 25,000 or who elect by referendum are home rule units. ILL. CONST. art. VII, § 6. Illinois currently has 217 home rule units. *Home Rule Municipalities*, ILL. MUN. LEAGUE, <https://www.impl.org/homerule-municipalities> (last visited Jan. 14, 2022) [https://perma.cc/2LB6-XU7R].

39. S.B. 3013, 101st Gen. Assemb., Reg. Sess. (Ill. 2020).

40. *Frequently Asked Questions*, CTR. FOR CMTY. PROGRESS, <https://communityprogress.org/resources/land-banks/lb-faq/> (last visited Jan. 14, 2022) [https://perma.cc/E4G9-BAZY].

41. *Id.*

42. ALEXANDER, *supra* note 12, at 23.

43. *Id.*

Local governments have a strong incentive to deal with vacant and abandoned properties in their communities.⁴⁴ Vacant and abandoned properties reduce the tax base in two senses: (1) there are no owners paying property taxes, and (2) it reduces the tax values of surrounding properties.⁴⁵ Additionally, local governments are responsible for maintenance costs, such as mowing, snow removal, and other nuisance abatement actions.⁴⁶ Lastly, these properties tend to require more services from local police and fire departments.⁴⁷ According to the Tiebout model,⁴⁸ there could also be spillover effects if property tax per resident has to rise to accommodate any shortfall due to the smaller tax base or the increase demand of services.⁴⁹

Even with this strong incentive, many local governments have seen the number of vacant and abandoned properties in their communities increase.⁵⁰ This disconnect is the result of time-consuming proceedings.⁵¹ The first is an antiquated property tax foreclosure system.⁵² Municipalities have passed legislation designed to shorten the delinquency foreclosures process.⁵³ But in many states, properties can linger for up to five years before being sold.⁵⁴

A second way municipalities can receive ownership is through a tedious declaration of abandonment process, which requires a notice period, a judicial hearing, and a redemption period.⁵⁵ In order for a municipality to even begin the process:

1. the property must be tax delinquent for two or more years or have outstanding water bills for two or more years;
2. property must be unoccupied by persons legally in possession; AND
3. the property contains a dangerous or unsafe building.⁵⁶

A third option is a Trustee Tax program where the county serves as “trustee for all taxing districts” and picks up any delinquent properties not bid on at sale auctions.⁵⁷ After the property is delinquent for at least two years, the county gets

44. *Id.* at 16.

45. *Id.*

46. GASTEYER ET AL., *supra* note 28, at 59.

47. *Id.*

48. According to Charles Tiebout’s Theory of Local Expenditures, consumer-voters will move to another locality if unhappy with the tax rate or the services provided. RICHARD BRIFFAULT & LAURIE REYNOLDS, CASES AND MATERIALS ON STATE AND LOCAL GOVERNMENT LAW 30–31 (8th ed. 2016).

49. *Id.*

50. Zoom Interview with Brent Denzin, *supra* note 18.

51. *Id.*

52. *Id.*

53. 735 ILL. COMP. STAT. 5/11-1505.8 (2013); N.Y.C., N.Y., ADMIN. CODE § 11-404 (1996).

54. ALEXANDER, *supra* note 12, at 30.

55. Zoom Interview with Brent Denzin, *supra* note 18; 735 ILL. COMP. STAT. 5/11-1505.8 (2013). Illinois passed legislation to expedite abandonment judgments, but practitioners still feel it takes too long.

56. 65 ILL. COMP. STAT. 5/11-31-1(d) (2009).

57. Zoom Interview with Holly Kim, Treasurer, Lake Cnty. & Vasyl Markus, Deputy Treasurer, Lake Cnty. (Mar. 4, 2021); 35 ILL. COMP. STAT. 220/21-90 (1995).

ownership.⁵⁸ While the program theoretically seems straightforward and streamlined, there can be a few hiccups.⁵⁹

First, the county chooses whether to put a lien on the property in the first place and may forego putting a lien on a property that has little value to avoid receiving ownership.⁶⁰ Second, some properties get stuck in what seems like a never-ending cycle.⁶¹ One infamous example is a parcel in Lake County.⁶² On paper, the property looks like a good investment; however, if a tax buyer does a bit more research, they will discover an easement for a roadway.⁶³ For the past several years, a tax buyer has bid and won the property only to later discover the easement.⁶⁴ The tax buyer then files a petition for a sale in error, gets their money back, and the process repeats.⁶⁵ Since the county only receives liens no one bids on, it must wait for the cost of the lien to get so high it deters any bids.⁶⁶ This takes years.⁶⁷

Municipalities also face challenges when it comes to property disposition. Many are subject to longstanding statutory disposition requirements, including when a property can be sold, where it can be sold, and for how much.⁶⁸ A municipality may acquire a property through a judicial deed issued by a court pursuant to the abandoned property program.⁶⁹ “[T]he issuance of the judicial deed extinguished all existing ownership or other interests in the Property.”⁷⁰ If a property, however, is acquired through a nonjudicial tax foreclosure, the municipality may be unable to convey to a third party due to title defects.⁷¹ The Internal Revenue Service defines a nonjudicial foreclosure as one that does not involve the court system and instead is “instigated by any encumbrance holder.”⁷²

Local governments may also worry about losing control over the redevelopment of the property if the tax liens are sold to private investors.⁷³ These investors could be out of town speculators with no ties to the community.⁷⁴ Or,

58. Zoom Interview with Holly Kim & Vasyl Markus, *supra* note 57.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. ALEXANDER, *supra* note 12, at 31; *see, e.g.*, IND. CODE § 5-22-22 (2012).

69. 65 ILL. COMP. STAT. 5/11-31-1(d) (2009).

70. *Id.*; 35 ILL. COMP. STAT. 200/21-95 (2018) (When a public entity receives a property through the foreclosure of a lien, judicial deed, foreclosure of receivership certificate lien, or through an abandoned property program, “all due or unpaid property taxes and existing liens . . . shall become null and void.”); *In re Cnty. Treasurer*, 721 N.E.2d 628, 629–30 (Ill. App. Ct. 1999), *as modified on denial of reh’g* (Dec. 9, 1999).

71. ALEXANDER, *supra* note 12, at 31.

72. INTERNAL REVENUE SERV., INTERNAL REVENUE MANUALS pt. 5 ch. 12 § 4 (2016).

73. ALEXANDER, *supra* note 12, at 30.

74. *Id.* at 58.

perhaps, they may plan to just sit on the property with no maintenance or development plans.⁷⁵

There is not a one-size-fits-all approach to land banks.⁷⁶ Land banks must have the flexibility to respond to their specific communities' needs.⁷⁷ But all land banks must have three specific powers: to (1) acquire; (2) maintain; and (3) dispose of or demolish property.⁷⁸ Acquisition can occur through gift, donation, or deed in lieu; direct market purchases; declaration of abandonment; or tax foreclosure.⁷⁹ No current state-enabled legislation grants land banks the power of eminent domain, the power of the government to take private property without the owner's consent.⁸⁰ Michigan's legislation explicitly precludes it.⁸¹

Maintenance powers range from managing, to repairing, to any "other actions necessary to preserve the value of the property"⁸² In order to properly maintain properties, land banks must be able to enter into property management contracts,⁸³ grant or acquire a license or easement, and begin the quiet title proceedings.⁸⁴ It would also be beneficial for land banks to have the authority to establish fees and collect rents⁸⁵ and remediate any environmental contamination.⁸⁶

Historically, for municipalities to be able to dispose of government-owned property, the property had to be "surplus" with no public purpose and sold at a public auction for at least fair market value.⁸⁷ These requirements prevent land banks from selling a property to an environmental nonprofit or an affordable housing developer for one dollar or possibly preventing sale if not deemed "surplus."⁸⁸ It is critical that land banks have the ability, flexibility, and pricing power to transfer property without title defects to other parties.⁸⁹ Other powers land banks may desire are immunity for environmental problems⁹⁰ and borrowing capacity.⁹¹

75. GASTEYER ET AL., *supra* note 28, at 32.

76. ALEXANDER, *supra* note 12, at 85.

77. *Id.*

78. *Id.* at 50–54.

79. *Id.* at 52; *see, e.g.*, MICH. COMP. LAWS § 124.755 (2004).

80. GASTEYER ET AL., *supra* note 28, at 22 n.57, 23.

81. § 124.754.

82. *Id.* § 124.756.

83. ALEXANDER, *supra* note 12, at 53.

84. § 124.756.

85. ALEXANDER, *supra* note 12, at 53.

86. § 124.756.

87. ALEXANDER, *supra* note 12, at 31.

88. Michigan's statute allows land banks to convey property "for no monetary consideration." § 124.757.

89. ALEXANDER, *supra* note 12, at 37.

90. § 124.760.

91. *Id.* § 124.774.

The first generation of land banks,⁹² starting with St. Louis in the early 1970s, were hamstrung by states' antiquated foreclosure systems.⁹³ First, their inability to generate their own source of funding meant they were dependent on local governments for support.⁹⁴ Second, the land banks were created without any significant change to the tax foreclosure system, meaning the land banks had to deal with lengthy statutory waiting periods and other archaic procedures before gaining ownership of the property.⁹⁵ Third, since there was no change to the tax foreclosure system, when the land bank finally gained ownership, the property still lacked marketable and insurable title, therefore, requiring future legal proceedings if transferred to another party for reuse.⁹⁶ Fourth, the land banks were intertwined with other city programs leaving them vulnerable to budget commingling and the chopping block.⁹⁷ The modern era of land banks, or the "second generation," led by Michigan in the early 2000s and followed by Ohio, turned these systems on their heads.⁹⁸ These systems are further discussed in Part III.⁹⁹

After the 2008 housing crisis, land banks became more common.¹⁰⁰ They were recognized by federal law for the first time in 2008 as an approved use for the Neighborhood Stabilization Program, alongside a \$4 billion appropriation.¹⁰¹ An additional \$2 billion was allocated the next year.¹⁰² Now, federal law recognizes and encourages the use of land banks in several federal programs, including the Hardest Hit Fund and President Obama's Strong Cities, Strong Communities effort.¹⁰³

Recent action has not been limited to the federal level.¹⁰⁴ Between 2011 and 2015, eight additional states passed state-enabling land bank legislation.¹⁰⁵ This third generation of land banks "differs from the prior group more in form than substance."¹⁰⁶ The new legislation is more straightforward and easier to understand than second generation legislation.¹⁰⁷

92. St. Louis (1971); Cleveland (1976); Louisville (1989); and Atlanta (1991). ALEXANDER, *supra* note 12, at 19.

93. *Id.* at 19.

94. *Id.* at 20.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. See discussion *infra* Part III.

100. Tamar Shapiro, *Foreword* to FRANK S. ALEXANDER, *LAND BANKS AND LAND BANKING* 8 (2d ed. 2015).

101. *Id.* at 23; Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, § 2301, 122 Stat. 2654, 2850.

102. ALEXANDER, *supra* note 12, at 24.

103. *Id.*

104. See *id.* at 21–22.

105. *Id.* (New York (2011), Georgia (2012), Missouri (2012), Pennsylvania (2012), Tennessee (2012), Nebraska (2013), Alabama (2013), and West Virginia (2014)).

106. GASTEYER ET AL., *supra* note 28, at 13.

107. *Id.*

Land banks are not without their opponents.¹⁰⁸ There are three main arguments against land banks.¹⁰⁹ The first is that land banks are given the authority to “cherry pick” properties ahead of private purchasers, creating unfair competition.¹¹⁰ Second, land banks scare off private investors who worry about too much governmental control.¹¹¹ Third, land banks threaten the American bedrock principle of private property rights.¹¹²

As of the writing of this Note, the United States is in the midst of a pandemic.¹¹³ At this point, it is impossible to determine the long-term impact on families, businesses, and local governments.¹¹⁴ The impact may be similar to the housing foreclosure crisis of 2008,¹¹⁵ which led to widespread housing abandonment in many Rust Belt cities “resulting in empty urban neighborhoods, growing numbers of abandoned houses, and destabilized neighborhoods.”¹¹⁶ Experts predict the fallout will be much worse for low-wage, minority workers.¹¹⁷

State and local governments are bracing for the worst.¹¹⁸ Illinois, at one point, estimated it could potentially face a \$7 billion general revenue shortfall.¹¹⁹ And local governments are seeing the loss of permanent businesses.¹²⁰ The Federal Reserve predicts unemployment numbers will not recuperate until the end of 2023.¹²¹ Hidden in these numbers is the likely reality that local governments will see an increase of both commercial and residential vacant and abandoned

108. *Id.* at ix.

109. *See id.* at 61–63.

110. *Id.* at 61.

111. *Id.*

112. *Id.* at 62.

113. William Wan & Jacqueline Dupree, *U.S. Hits Highest Daily Number of Coronavirus Cases Since Pandemic Began*, WASH. POST (Oct. 23, 2020, 6:15 PM) <https://www.washingtonpost.com/health/2020/10/23/covid-us-spike-cases/> [https://perma.cc/6R5R-Z7Q8] (noting that on October 23rd, the U.S. recorded at least 82,900 new cases).

114. *See* Erin Ailworth, *Illinois Businesses Brace for New Covid-19 Restrictions*, WALL ST. J. (Oct. 24, 2020, 9:00 AM), <https://www.wsj.com/articles/illinois-businesses-brace-for-new-covid-19-restrictions-1160354440> [https://perma.cc/5AZX-ZXBB]; Dan McKay, Dan Boyd, & Pilar Martinez, *Amid Virus Spikes, NM to Impose New Requirements*, ALBUQUERQUE J. (Oct. 20, 2020, 10:41 PM), <https://www.abqjournal.com/1508978/watch-live-governor-to-brief-public-on-virus-efforts.html> [https://perma.cc/JS2V-62HX].

115. Kriston Capps, *Can Land Banks Get Us Out of This Mess?*, BLOOMBERG CITYLAB (June 15, 2020, 1:41 PM), <https://www.bloomberg.com/news/articles/2020-06-15/how-coronavirus-makes-the-case-for-land-banks> [https://perma.cc/8XMT-XYHH].

116. Newman et al., *supra* note 15, at 2.

117. Heather Long, Andrew Van Dam, Alyssa Fowers & Leslie Shapiro, *The Covid-19 Recession Is the Most Unequal in Modern U.S. History*, WASH. POST (Sept. 30, 2020), <https://www.washingtonpost.com/graphics/2020/business/coronavirus-recession-equality/> [https://perma.cc/CDL7-4YQ3].

118. *See* Press Release, Ill. Dep’t of Com. & Econ. Opportunity, Gov. Pritzker Provides Updated Revenue Projections Amid COVID-19 Crisis (Apr. 15, 2020), <https://www2.illinois.gov/dceo/Media/PressReleases/Pages/PR20200415.aspx> [https://perma.cc/42NT-7RWV].

119. *Id.*

120. More than 100,000 small businesses had permanently closed their doors by May 2020. Capps, *supra* note 115.

121. Long et al., *supra* note 117.

buildings in their communities.¹²² As discussed, vacant and abandoned properties are costly to local cities because of the direct annual maintenance cost and the loss of tax revenues.¹²³ Additionally, decreasing property values tend to lead to an increase in crime rates.¹²⁴ It is against this backdrop that this Note analyzes the benefits and potential pitfalls of state-enabling land bank legislation in Illinois.

While Illinois land banks have proven that it is not necessary to have state-enabling legislation, this Note argues the current land bank structures in Illinois are not sufficient to meet all their communities' needs.¹²⁵ When it comes to clearing tax debt, mortgages, and liens, Illinois land banks have the same authority as land banks in Ohio and Michigan.¹²⁶ Illinois land banks, however, do not have the necessary support system, mainly a permanent funding source, to be truly effective.¹²⁷

III. ANALYSIS

This Part will analyze different land bank systems and funding mechanisms. It will also examine how downstate communities might be locked out of land bank resources.¹²⁸ Further, it will consider whether the legislation should be preemptive or grandfathered.¹²⁹

A. Comparing Illinois's Land Bank System with Michigan's and Ohio's

1. Michigan and Ohio

Seeing the failures of the first generation, Michigan first overhauled its tax foreclosure system in 1999.¹³⁰ The revised law eliminated annual tax-lien sales, permitting counties to bypass private investors, in favor of a speedier judicial foreclosure process.¹³¹ Prior to 1999, some properties were stuck in limbo for up to seven years.¹³² In 2003, the Michigan legislature established the Michigan

122. See Press Release, U.S. Dep't of Hous. & Urb. Dev., Federal Housing Administration Introduces More Measures to Help Homeowners Struggling Due to COVID-19 (June 25, 2021), https://www.hud.gov/press/press_releases_media_advisories/HUD_No_21_108 [https://perma.cc/A8UH-WY45].

123. ALEXANDER, *supra* note 12, at 15–16.

124. *Id.* at 16.

125. Zoom Interview with Brent Denzin, *supra* note 18.

126. *Id.*

127. *Id.*

128. See discussion *infra* Section III.A.4.

129. See discussion *infra* Section III.C.

130. Zoom Interview with Brent Denzin, *supra* note 18.

131. *Tax Reversion*, ISABELLA CNTY., https://www.michigan.gov/documents/taxes/General_Transition_Information_August_1999_317124_7.pdf (last visited Jan. 14, 2022) [https://perma.cc/D9PM-XYFL].

132. *History*, GENESEE CNTY. LAND BANK, <http://www.thelandbank.org/history.asp> (last visited Jan. 14, 2022) [https://perma.cc/WKH6-BBW6].

Land Bank Fast Track Authority (“MLBFTA”).¹³³ MLBFTA serves two roles: (1) it has authority to deal with state-owned tax-foreclosed properties; and (2) it has some supervisory oversight of all Michigan land banks.¹³⁴

In 1960, Flint, Michigan was a highly desirable place to live with a population of almost 200,000 people.¹³⁵ The auto industry promised good paying jobs, and the town thrived.¹³⁶ But as the jobs left, so did the people.¹³⁷ By 2013, Flint’s population had decreased by 50% and more and more homes were being left behind.¹³⁸ As a result of the 1999 reform, Genesee County established the Genesee County Land Reutilization Council in 2002, which became the Genesee County Land Bank two years later.¹³⁹ As a result of the reform, what used to take seven years now took half the time.¹⁴⁰ Once the property has been tax-delinquent for two years, it is deeded to the County Treasurer and the acquisition process to the Genesee County Land Bank begins, which takes about nine months at most.¹⁴¹ From 2004–2016, the Genesee County Land Bank (“GCLB”) acquired an average of about 1,200 properties each year.¹⁴² On average, GCLB renovates twenty-five to fifty properties per year.¹⁴³ Maybe even more impressive, it demolished 3,330 properties over the same time period.¹⁴⁴

On the other side of Lake Erie, approximately 225 miles away, another almost identical story developed.¹⁴⁵ After World War I, Cleveland, Ohio boomed with families and jobs.¹⁴⁶ In 1950, the population peaked at over 900,000.¹⁴⁷ Six decades later, the city’s population fell under 400,000 with nearly 20% of its houses vacant.¹⁴⁸

To stop the bleeding, Ohio followed Michigan’s lead and passed state-enabling legislation but with a slightly different approach.¹⁴⁹ Instead of doing a

133. ALEXANDER, *supra* note 12, at 21; Newman et al., *supra* note 15, at 5; H.B. 4483, 92nd Leg. (Mich. 2004).

134. ALEXANDER, *supra* note 12, at 21.

135. Blake Thorne, *See How Flint’s Population Has Changed Over 150 Years*, MLIVE, (Jan. 20, 2019), https://www.mlive.com/news/flint/2014/05/see_how_flints_population_has.html [https://perma.cc/7YFB-96DU]. Flint, Michigan is in Genesee County.

136. DEP’T OF TECH., MGMT. & BUDGET, STATE OF MICH., DEMOGRAPHIC AND LABOR MARKET PROFILE: CITY OF FLINT 5, 5–6 (2016).

137. *Id.* at 6.

138. *Id.* at 5.

139. Intergovernmental Agreement Between the Michigan Land Bank Fast Track Authority and the Treasurer of the county of Genesee, Michigan Creating the Genesee County Land Bank Authority (Dec. 7, 2004) [hereinafter GCLBA]; GENESEE CNTY. LAND BANK, *supra* note 132.

140. *See* GASTEYER ET AL., *supra* note 28, at 66.

141. *Id.*

142. Newman et al., *supra* note 15, at 7 tbl.1.

143. GASTEYER ET AL., *supra* note 28, at 67.

144. Newman et al., *supra* note 15, at 7 tbl.1.

145. Driving Direction from Genesee County, MI to Cuyahoga County, OH, GOOGLE MAPS, <https://www.maps.google.com> (follow “Directions” hyperlink; then search starting point field for “Genesee County, MI” and search destination field for “Cuyahoga County, OH”).

146. GASTEYER ET AL., *supra* note 28, at 68.

147. *Id.*

148. *Id.*

149. ALEXANDER, *supra* note 12, at 20; Newman et al., *supra* note 15, at 5.

complete tax foreclosure overhaul, the legislation “create[ed] significant new points of intervention in the existing tax foreclosure laws.”¹⁵⁰ But that by no means suggests it was simpler than Michigan’s; “Senate Bill 353 was almost two hundred pages in length and amended or created over 100 separate provisions of the Ohio Code.”¹⁵¹ In 2008, the Ohio General Assembly passed Senate Bill 353 establishing one land bank, the Cuyahoga County Land Reutilization Corporation, which was eventually renamed the Cuyahoga County Land Bank (“CCLB”).¹⁵² Two years later, the legislature expanded the program to forty-two other counties.¹⁵³

CCLB’s top priority was blight reduction.¹⁵⁴ Over a ten-year period, CCLB demolished 60% of its properties, roughly 8,000, adding approximately \$60,000 in property value to surrounding homes.¹⁵⁵ This was a great accomplishment but also an expensive one.¹⁵⁶ Demolition, as will be discussed in Section III.A.4, is costly; therefore, the land bank needed an external funding stream.¹⁵⁷ Ohio permits counties to designate 5% of the funds collected from delinquent taxes to its land bank.¹⁵⁸ The Delinquent Tax and Assessment Collection (“DTAC”) provides a permanent funding source for land banks supplementing short-lived government grants and inconsistent property sales.¹⁵⁹ For instance, CCLB receives approximately \$7 million annually in DTAC funding, and the Lucas County Land Bank receives nearly \$1.4 million.¹⁶⁰ DTAC will be further discussed in Section III.B.1.¹⁶¹

2. Cook County Land Bank Structure

Illinois’s legislature attempted to pass state-enabling land bank legislation in 2009 but was ultimately unsuccessful.¹⁶² Realtors are credited with ultimately blocking the Illinois legislation.¹⁶³ While some proponents believed realtors feared unfair competition, one realtor interviewed believed the industry’s

150. ALEXANDER, *supra* note 12, at 21.

151. *Id.* at 95.

152. GREATER OHIO POL’Y CTR., TAKING STOCK OF OHIO COUNTY LAND BANKS 2 (2015); S.B. 353, 127th Gen. Assemb., Reg. Sess. (Ohio 2009).

153. See H.B. 313, 128th Gen. Assemb., Reg. Sess. (Ohio 2010).

154. See Jordyn Grzelewski, *After 10 Years and 8,000 Demolitions, Cuyahoga Land Bank Shifts Focus to Rehabs*, PLAIN DEALER (June 24, 2019), <https://www.cleveland.com/business/2019/06/after-10-years-and-143-billion-in-economic-impact-cuyahoga-land-bank-prepares-to-shift-gears.html> [<https://perma.cc/UX9A-AHF8>].

155. *Id.*

156. See *id.*

157. See discussion *infra* Section III.A.4.

158. GREATER OHIO POL’Y CTR., *supra* note 152, at 4.

159. Grzelewski, *supra* note 154.

160. Tarik Abdelazim, *How to Fund Land Banks*, SHELTERFORCE (Nov. 13, 2018), <https://shelterforce.org/2018/11/13/how-to-fund-land-banks/> [<https://perma.cc/54Q6-8JTT>].

161. See discussion *infra* Section III.B.1.

162. H.R. 1195, 96th Gen. Assemb., Reg. Sess. (Ill. 2009).

163. See ALEXANDER, *supra* note 12, at 102.

opposition had more to do with resentment from being excluded from the process.¹⁶⁴ Further, unlike its Michigan and Ohio counterparts, there was no land bank champion in Illinois.¹⁶⁵

Even though the legislation failed, five land bank authorities currently exist in Illinois.¹⁶⁶ They are the Cook County Land Bank Authority (“CCLBA”), the South Suburban Land Bank and Development Authority (“SSLBDA”), the Central Illinois Land Bank Authority (“CILBA”), Northern Illinois Land Bank Authority (“NILBA”), and the Lake County Land Bank Authority (“LCLB”).¹⁶⁷ CCLBA was created by county ordinance and home rule authority,¹⁶⁸ similar to a water agency or solid waste cleanup authority.¹⁶⁹ The Center for Community Progress¹⁷⁰ called the CCLBA “the best example” of a land bank operating despite lacking state land bank enabling legislation.¹⁷¹ The other four authorities were created by intergovernmental agreement and the only difference between them is in regard to hiring.¹⁷²

The Cook County Board, spearheaded by Commissioner Bridget Gainer, passed an ordinance pursuant to home rule authority to establish a land bank.¹⁷³ CCLBA was established on March 13, 2013 as a public entity governed by an appointed Board of Directors.¹⁷⁴ It currently owns 600 properties.¹⁷⁵ CCLBA’s priorities are neighborhood revitalization, affordable housing, economic development, and conservation.¹⁷⁶ It received \$15 million in seed money raised through grants and community foundations, including \$6 million from the

164. *Id.* The National Land Bank Act, federal legislation currently before Congress, is supported by the National Association of Real Estate Brokers. Zoom Interview with Sarah Ware, Principal & Managing Broker, Sarah Ware Realty Grp. (Feb. 12, 2021).

165. Zoom Interview with Brent Denzin, *supra* note 18. Michigan had Dan Kildee, now a Congressman who served as the Genesee County Treasurer, and is credited with establishing the Genesee County Land Bank. He then went on to co-found the Center for Community Progress, a leading land bank authority. Ohio had the Greater Ohio Policy Center that continues to lobby on behalf of land banks.

166. COOK COUNTY, ILL., CODE OF ORDINANCES ch. 103 (2013); CILBA, *supra* note 17; NILBA, *supra* note 17; SSLBDA, *supra* note 17; LCLBA, *supra* note 17.

167. COOK COUNTY, ILL., CODE OF ORDINANCES ch. 103 (2013); CILBA, *supra* note 17; NILBA, *supra* note 17; SSLBDA, *supra* note 17; LCLBA, *supra* note 17.

168. ILL. CONST. art. VII, § 6.

169. Zoom Interview with Brent Denzin, *supra* note 18.

170. *About Us*, CTR. FOR CMTY. PROGRESS, <https://www.communityprogress.net/about-pages-4.php> (last visited Jan. 14, 2022) [<https://perma.cc/4Z6K-DG2S>] (“[T]he only national nonprofit specifically dedicated to building a future in which vacant, abandoned, and deteriorated properties no longer exist.”).

171. ALEXANDER, *supra* note 12, at 22.

172. *Id.*; CILBA, *supra* note 17; NILBA, *supra* note 17; SSLBDA, *supra* note 17; LCLBA, *supra* note 17.

173. Ted Cox, *Cook County Board Forms Nation’s Largest Land Bank to Help Neighborhoods*, DNAINFO (Jan. 16, 2013, 6:04 PM), <https://www.dnainfo.com/chicago/20130116/chicago/cook-county-board-forms-nations-largest-land-bank-help-neighborhoods/> [<https://perma.cc/PD8F-AAN7>].

174. COOK CNTY. LAND BANK AUTH., POLICIES AND PROCEDURES: ACQUISITION AND DISPOSITION OF REAL PROPERTY 3 (2018).

175. Zoom Interview with Brent Denzin, *supra* note 18.

176. COOK CNTY. LAND BANK AUTH., *supra* note 174, at 3–4.

national foreclosure settlement agreement.¹⁷⁷ CCLBA now relies on grants and property sales for its funding.¹⁷⁸

3. *South Suburban Land Bank and Development Authority*

Chicago's south suburbs were devastated by the 2008 housing crisis.¹⁷⁹ According to the Institute for Housing Studies at DePaul University, the top ten towns who had the most foreclosures in Cook County were all in the south suburbs.¹⁸⁰ It is common for homes in these communities to have lost 50% of their value.¹⁸¹ For instance, approximately twenty miles south of Chicago, in Markham,¹⁸² the median price for an existing single-family home fell over 68%.¹⁸³

Sensing the urgency, the South Suburban Mayors and Managers Association formed the SSLBDA in 2012 through an intergovernmental agreement between three municipalities.¹⁸⁴ It now consists of twenty-two south-suburban communities.¹⁸⁵ It received its initial funding from a HUD Sustainable Communities Grant.¹⁸⁶ SSLBDA also received \$1.5 million from the Illinois Attorney General's National Foreclosure Settlement and \$550,400 from the Illinois Housing Development Authority's Abandoned Property Program.¹⁸⁷ SSLBDA's funding mechanism is the same as CCLBA: grants and property sales.¹⁸⁸ But it has expressed interest in "mov[ing] toward a self-sustaining model."¹⁸⁹

A challenge for SSLBDA is its inability to independently initiate the abandonment process.¹⁹⁰ In contrast, in Ohio and Michigan, land banks can file tax abandonment petitions on behalf of municipalities without additional authorization.¹⁹¹ SSLBDA, on the other hand, must enter into an agreement with each

177. Cox, *supra* note 173; Mary Ellen Podmolik, *Madigan Hands Out Another \$70M from Foreclosure Settlement*, CHI. TRIB. (July 17, 2013), <https://www.chicagotribune.com/business/ct-xpm-2013-07-17-chi-foreclosure-grants-20130717-story.html> [<https://perma.cc/C7DA-74W4>].

178. Zoom Interview with Brent Denzin, *supra* note 18.

179. Kim Janssen, *Seven Years After the Great Recession, Some Chicago Suburbs May Never Recover*, CHI. TRIB. (Mar. 26, 2016, 5:40 AM), <https://www.chicagotribune.com/business/ct-suburban-housing-slump-0327-biz-20160324-story.html> [<https://perma.cc/J2XH-9PX9>].

180. *Id.*

181. *Id.*

182. *Distance from Markham, IL to Chicago, IL*, DISTANCE BETWEEN CITIES, <https://www.distance-cities.com/distance-markham-il-to-chicago-il> (last visited Jan. 14, 2022) [<https://perma.cc/9Q76-224E>].

183. Janssen, *supra* note 179.

184. *See South Suburban Land Bank and Development Authority*, METRO. PLAN. COUNCIL, <https://www.metroplanning.org/homegrown/case.aspx?case=sslbda> (last visited Jan. 14, 2022) [<https://perma.cc/JMD6-FB7U>].

185. *Id.*

186. *Id.*

187. Ed Paesel, Editorial, *Editorial Advisory Board: South Suburban Land Bank Making Progress*, NW. IND. TIMES (Feb. 19, 2020), https://www.nwitimes.com/news/opinion/columnists/guest-commentary/editorial-advisory-board-south-suburban-land-bank-making-progress/article_89c9aaef-490a-520e-b4e5-bf0435b8c241.html [<https://perma.cc/3VLD-ZVHC>].

188. Zoom Interview with Brent Denzin, *supra* note 18.

189. METRO. PLAN. COUNCIL, *supra* note 184.

190. *Id.*

191. *Id.*

municipality authorizing SSLBDA and its counsel to handle the abandonment proceedings for specific parcels.¹⁹² This issue must be addressed in any state-enabling legislation.¹⁹³

4. Downstate Troubles

It is no secret that Illinois is experiencing an emigration problem.¹⁹⁴ Beginning in 2014, Illinois has seen its population decrease each year,¹⁹⁵ which puts Illinois 49th in terms of population growth, behind only West Virginia.¹⁹⁶ Illinois lost 18,124 residents between 2010 and 2020 dropping to the sixth most populous state.¹⁹⁷ And while a lot of the focus has been on Chicago, the counties with the highest rates of emigration are outside of Chicagoland.¹⁹⁸ Chicago's population only declined by less than 0.1% while four surrounding counties actually saw population growth.¹⁹⁹ Outside the Windy City, Illinois is mainly an agricultural and manufacturing state, and when those jobs leave, they are unlikely to come back.²⁰⁰

Small towns, therefore, need to embrace a “Smart Shrinkage” land planning mindset.²⁰¹ Smart Shrinkage is the understanding that not all vacant properties

192. See, e.g., Blue Island, Ill., Ordinance 2019-055 (Nov. 26, 2019).

193. Zoom Interview with Brent Denzin, *supra* note 18.

194. Cecilia Reyes & Patrick M. O'Connell, *There's a Lot of Talk About an 'Illinois Exodus.' We Took a Closer Look at the Reality Behind the Chatter*, CHI. TRIB. (Sept. 25, 2019, 7:07 AM), <https://www.chicagotribune.com/news/ct-census-illinois-population-trend-leavers-met-20190925-55e2uha64rardg7pa5734u6twu-story.html> [<https://perma.cc/P7CA-LP5G>].

195. *Id.*

196. Kevin Haas, *How is Illinois Changing? Here's What the 2020 Census Data Tells Us*, ROCKFORD REG. STAR (Aug. 12, 2021, 6:28 PM), <https://www.rstar.com/story/news/local/2021/08/12/illinois-census-2020-results-census-results-released-census-bureau/8110904002/> [<https://perma.cc/755B-JD6A>]; see also Orphe Divounguy & Bryce Hill, *State of the State 2019: Past Mistakes Show Path to Better Future for Illinois*, ILL. POL'Y, <https://www.illinoispolicy.org/reports/state-of-the-state-2019-past-mistakes-show-path-to-better-future-for-illinois/> (last visited Jan. 14, 2022) [<https://perma.cc/7KQR-6VW6>].

197. Illinois had a population of 12,812,508 according to the 2020 Census. *Resident Population for the 50 States, the District of Columbia, and Puerto Rico: 2020 Census*, U.S. CENSUS BUREAU, U.S. DEP'T OF COM. (Apr. 1, 2020), <https://www2.census.gov/programs-surveys/decennial/2020/data/apportionment/apportionment-2020-table02.pdf> [<https://perma.cc/J5XE-R8F6>]; Bryce Hill, *Illinois Population Loss Drops It to 6th-Most Populous State*, ILL. POL'Y (Apr. 28, 2021), <https://www.illinoispolicy.org/illinois-population-loss-drops-it-to-6th-most-populous-state/> [<https://perma.cc/FY7R-789R>].

198. Reyes & O'Connell, *supra* note 194; *County Population Estimates for Illinois: July 1, 2010 to July 1, 2015*, ILL. DEP'T OF PUB. HEALTH DIV. OF HEALTH DATA & POL'Y, <https://dph.illinois.gov/sites/default/files/publications/publicationsoppscounty-estimates-2010-2019.pdf> (last visited Sept. 21, 2021) [<https://perma.cc/RXA6-EFKF>].

199. *Illinois Sees Second-Largest Population Loss of U.S. States*, CHI. METRO. AGENCY FOR PLAN., https://www.cmap.illinois.gov/updates/all/-/asset_publisher/UIMfSLnFfMB6/content/population-loss-2020-census (last visited Jan. 14, 2022) [<https://perma.cc/Q7GZ-L22D>].

200. See DAVID J. PETERS, SHRINK-SMART SMALL TOWNS: COMMUNITIES CAN STILL THRIVE AS THEY LOSE POPULATION I (2017); Sarah Schulte, *2020 Census Results: Illinois Loses Population, But Not from Where You'd Think*, ABC (Apr. 27, 2021), <https://abc7chicago.com/census-2020-results-illinois-population/10554392/> [<https://perma.cc/CG9D-44M7>].

201. Newman et al., *supra* note 15, at 2.

will be reutilized as developed ones.²⁰² Instead, some vacant properties will be used for green space or another community need.²⁰³ Communities need to do more than just plant grass though because then they are just spending money mowing lawns.²⁰⁴

Land banks should be an essential component of any Smart Shrinkage game plan but need to be allowed to do more than just demolish residential properties.²⁰⁵ Land banks need to have the authority to also focus on commercial properties.²⁰⁶ For example, Hoopeston, Illinois sought assistance from the local land bank to help address a building downtown with a collapsed roof and occupied by squatters.²⁰⁷ The land bank's hands were tied because it does not have funding to assist with commercial properties.²⁰⁸

Illinois currently has two land authorities downstate: Central Illinois Land Bank Authority and Northern Illinois Land Bank Authority.²⁰⁹ CILBA was formed in 2016 and currently has twenty government members.²¹⁰ Its goals include: to “revitalize[] neighborhoods, increase[] property values, stabilize[] real estate markets and redevelop[] . . . properties”²¹¹ The NILBA was created in December 2018, with the goals of creating decent housing, returning abandoned properties to productive use, revitalizing neighborhoods, and creating more green space.²¹² The NILBA sold its first property in September 2020 and hopes to get ten to twenty tax-delinquent properties back into productive use each year.²¹³ Both land banks rely on the Illinois Housing Development Authority (“IHDA”) for funding,²¹⁴ which in turn is using “some of the state’s share of a \$25 billion national settlement for homeowners harmed by fraudulent foreclosure and mortgage practices.”²¹⁵ CILBA currently receives more than 95% of its funding from IHDA.²¹⁶

202. *Id.*

203. *Id.*

204. Zoom interview with Mike Davis, Exec. Dir., Cent. Ill. Land Bank Auth. (Apr. 23, 2021).

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. CENT. ILL. LAND BANK AUTH., <https://www.cilba.org/> (last visited Jan. 14, 2022) [<https://perma.cc/ZT4S-Y9WB>].

211. *Id.*

212. NILBA, *supra* note 17.

213. Some delay due to COVID. Kristin Camiliere, *Northern Illinois Land Bank Makes a Historic Move in Fighting Area Blight*, 23WIFR (Sept. 24, 2020, 6:16 PM), <https://www.wifr.com/2020/09/24/the-northern-illinois-land-bank-authority-makes-a-historic-move-in-fighting-area-blight/> [<https://perma.cc/5RZW-943S>].

214. Analisa Trofimuk, *Decatur City Leaders May Move Forward with Land Bank, Demolitions*, HERALD & REV. (Sept. 15, 2019), https://herald-review.com/news/local/govt-and-politics/decatur-city-leaders-may-move-forward-with-land-bank-demolitions/article_7beeced2-0b50-5962-8571-8a659c858fd3.html [<https://perma.cc/7QQK-MH77>].

215. Tracy Crane, *Vermilion County Land Bank Goes Regional*, INDEP. NEWS (Sept. 30, 2019), https://www.the-independent-news.com/news/vermilion-county-land-bank-goes-regional/article_bcf17452-e38e-11e9-cc95-b758efe5b999.html [<https://perma.cc/9NLA-WAVH>].

216. Email Interview with Mike Davis, Exec. Dir., Cent. Ill. Land Bank Auth. (Jan. 20, 2021).

The land banks need a funding source to supplement the grant funding they receive from the IHDA.²¹⁷ Unlike their counterparts in Chicagoland, the value capture funding source or relying on property sales is less reliable because of a weaker real estate market and fewer families on standby eager to purchase a home.²¹⁸ More so, these communities have a higher interest in blight reduction to accommodate their decreasing population.²¹⁹ But not only is there no money in demolition, it is also extremely expensive to demolish a property.²²⁰ For instance, the city of Danville in East Central Illinois needs approximately \$5-\$10 million for demolitions and Decatur, a city outside of Champaign, Illinois, likely needs over \$15 million to effectively combat blight.²²¹ Due to grant funding formulas, the cities were limited to awards of \$175,000 and \$125,000, respectively, for blight reduction.²²² At that rate, the cities are only able to solve 1–2% of their problems.²²³ Mike Davis, executive director for the Central Illinois Land Bank Authority, strongly believes that new programs and initiatives are needed to address distressed properties *at scale*.²²⁴ If conditions on the ground are not meaningfully improving with existing state grant programs, then new programs that provide a holistic, comprehensive approach are needed.²²⁵

It is essential, therefore, that downstate land banks acquire access to a stable, permanent funding source for three reasons.²²⁶ First, if IHDA money runs out, it is unlikely these land banks would be able to be self-sufficient.²²⁷ Second, without additional revenues, these communities will never be able to achieve a top priority, namely an extensive blight reduction program.²²⁸ Third, these communities are limited in how comprehensive of an approach they can take to their redevelopment.²²⁹ They are restricted to tackling housing in a vacuum as opposed to including economic development, green space, and brownfields.²³⁰

The lack of funds is not the only barrier downstate land banks face. Downstate cities are more likely to have outdated property codes that lack bite.²³¹ A common refrain among CILBA members was “our codes have no teeth, are outdated and/or there is no one to enforce them on distressed buildings.”²³² CILBA has dedicated a lot of time to help members adopt the International Property

217. *Id.*

218. Zoom Interview with Brent Denzin, *supra* note 18.

219. *Id.*

220. *Id.*

221. Email Interview with Mike Davis, *supra* note 216.

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. Zoom interview with Mike Davis, *supra* note 204.

227. Zoom Interview with Brent Denzin, *supra* note 18.

228. *Id.*

229. Email Interview with Mike Davis, *supra* note 216.

230. *Id.*

231. Zoom interview with Mike Davis, *supra* note 204.

232. *Id.*

Maintenance Code and hire a shared code enforcement officer.²³³ This was in response to some member communities that did not know how to go about condemning properties.²³⁴ If there is no one for the land bank to coordinate with on code enforcement, then the ability for a land bank to act proactively to save distressed properties is limited.²³⁵ CILBA is building the infrastructure for member communities to proactively enforce code, but the big question that remains is whether there will be adequate resources to address the long list of distressed properties that need funding.²³⁶

The second problem is that it will be hard in some communities to address blight on scale without code enforcement because it will take years for the land bank to gain ownership.²³⁷ For instance, it takes three to five years for a property to make its way through the County Trustee Program.²³⁸ By the time the property cycles through, it is likely unsalvageable.²³⁹ Property codes can pressure homeowners to not only upkeep their property but also to incentivize deeds in lieu of foreclosure.²⁴⁰ A deed in lieu is when a homeowner voluntarily hands over its property to avoid foreclosure.²⁴¹ Deeds in lieu allow municipalities to sidestep time-consuming foreclosure proceedings.²⁴² Homeowners, however, are unlikely to proceed with a deed in lieu if their feet are not being held to the fire.²⁴³

Updating property codes would serve as a proactive approach instead of waiting on properties to cycle through.²⁴⁴ It would allow municipalities to bypass the inefficient foreclosure process and target the most problematic properties in their communities.²⁴⁵ Downstate municipalities, however, need support updating their codes and funds to hire an enforcer.²⁴⁶

Another barrier is the lack of grant funds for administrative overhead.²⁴⁷ Currently, IHDA's Abandoned Property Program ("APP") only provides funds for projects, nothing for staff.²⁴⁸ Similarly, the Strong Communities Program only provides 5% for administration.²⁴⁹ For cities who do not already have dedicated housing staff, this can be a deterrent to applying.²⁵⁰ For land banks like

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

241. James Chen, *Deed in Lieu of Foreclosure*, INVESTOPEDIA (Feb. 17, 2021), https://www.investopedia.com/terms/d/deed_in_lieu_of_foreclosure.asp [<https://perma.cc/P59A-4CKS>].

242. *Id.*

243. Zoom interview with Mike Davis, *supra* note 204.

244. *Id.*

245. *Id.*

246. *Id.* CILBA encourages cities to adopt the International Property Maintenance Code.

247. *Id.*

248. *Id.*

249. *Id.*

250. *Id.*

CILBA that have obtained \$430,000 in state grant funding across these two programs, they will only receive \$12,500 to administer these grant funds.²⁵¹ If another round of Land Bank Capacity Program funding is not provided to pay for administration, CILBA will run out of funds to pay staff to work on the grant programs that provide little to no administration budget.²⁵²

Land banks also face a paperwork nightmare.²⁵³ Currently, IHDA does not allow land banks to apply for their whole network in one application; instead they must apply on behalf of each member individually.²⁵⁴ APP program is a good example because the cap was \$75,000 per applicant.²⁵⁵ CILBA filled out four separate applications for the maximum of \$75,000 apiece and will now administer four separate grants written in their member's name with no administration budget.²⁵⁶ Inefficiencies strain already overextended land banks.²⁵⁷

The last piece to consider is brownfields.²⁵⁸ Currently, funding for brownfields is limited, and most small communities are not well positioned to deal with contaminated properties.²⁵⁹ Additionally, land banks have no budget to support staff time working on brownfield issues since it falls outside housing.²⁶⁰ In one instance, CILBA was able to assist Hoopeston with a sixteen acre brownfield project thanks to a local foundation that provided a \$10,000 grant to offset staff time.²⁶¹ Hoopeston, however, has another ten acres of brownfields, and as of May 2021, all options seem exhausted.²⁶² Solar panels, which do not disturb the ground, are suitable solutions for many brownfields.²⁶³ Yet stronger, reliable incentives are needed for solar developers to undertake smaller brownfield projects.²⁶⁴ Many solar developments in Illinois are currently occurring on farmland or other kinds of greenfields.²⁶⁵ Changes to brownfield funding or solar incentives for smaller brownfield project should also be considered by the General Assembly.

It is unlikely that one piece of legislation or land banks on their own can tackle all the barriers facing downstate communities.²⁶⁶ There is no silver bullet or one-size-fits-all approach to combating blight and distressed properties.²⁶⁷

251. *Id.*

252. *Id.*

253. *Id.*

254. *Id.*

255. *Id.*

256. *Id.*

257. *Id.*

258. *Id.* While not exactly in land bank purview, it is still important to note for the bigger picture.

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.*

Mike Davis, CILBA Executive Director, remarked, “communities need many tools in their toolbox.”²⁶⁸

B. Comparing Different Funding Mechanisms

1. Delinquent Tax

Experts agree Ohio has the best funding source for land banks.²⁶⁹ The Delinquent Tax and Assessment Collection Fund (“DTAC”) preceded Ohio’s state-enabling land bank legislation.²⁷⁰ In Ohio, the county treasurer, with assistance from the county prosecutor, is responsible for collecting delinquent taxes and penalties on real property, personal property, and mobile homes,²⁷¹ usually from foreclosure proceedings.²⁷² The county treasurer then distributes the corresponding funds back to the appropriate taxing jurisdiction, such as municipalities, townships, and school districts.²⁷³

Prior to any statewide land bank legislation, Ohio’s legislature permitted the county treasurer and county prosecutor to split 5% of the delinquent taxes for their efforts in collecting the funds.²⁷⁴ Initially, the treasurer and prosecutor could only use the funds “in connection with the collection of delinquent . . . assessments.”²⁷⁵ The next iteration permitted the county treasurer and county prosecutor, in counties with a population greater than 100,000, to disburse excess funds to municipalities to abate “foreclosed residential nuisances.”²⁷⁶ Subsequently, Ohio’s land bank enabling legislation updated the DTAC code to include the 5% land bank allotment.²⁷⁷

The new provision allows a county the option to annually direct up to 5% of the delinquent taxes and penalties it collects to the county’s land bank.²⁷⁸ Since Ohio only allows land banks to be created at the county level, there is no worry about needing to fund additional land banks or the pot getting split too thin.²⁷⁹ It is estimated that about two-thirds of all Ohio land banks receive the full 5% of DTAC funding.²⁸⁰ To put that into perspective, in Cuyahoga County, the 5%

268. *Id.*

269. Abdelazim, *supra* note 160.

270. OHIO REV. CODE ANN. § 321.261 (West 2008).

271. *Delinquent Tax & Assessment Collection (DTAC) Impact on Municipalities*, HAMILTON CNTY., OHIO, https://www.hamiltoncountyohio.gov/UserFiles/Servers/Server_3788196/File/Government/Open%20Hamilton%20County/Projects/Land%20Bank/DTACImpactSheet.pdf (last visited Jan. 14, 2022) [<https://perma.cc/7TJZ-CH4V>].

272. § 321.261.

273. *Delinquent Tax & Assessment Collection (DTAC) Impact on Municipalities*, *supra* note 271.

274. § 321.261.

275. *Id.*

276. *Id.*

277. *Id.*

278. Abdelazim, *supra* note 160.

279. *Id.*

280. *Id.*

allotment amounts up to approximately \$7 million annually and in Lucas County, nearly \$1.4 million.²⁸¹

2. *Tax Remittance*

An appealing funding mechanism is a tax remittance provision.²⁸² The tax remittance provision awards land banks a percentage of the property taxes on any property it sells for an arranged number of years.²⁸³ Many states seem to choose the 5/50 ratio, but the formula is flexible.²⁸⁴ For example, in a 5/50 state, a land bank would be granted 50% of the property tax revenue for up to five years after the completion of a land bank sale.²⁸⁵

This sounds like a perfectly reasonable funding solution but only in theory. This mechanism simply doesn't raise that much money given the types of properties land banks typically focus on.²⁸⁶ If the property has no or low value, then the property taxes will be low and the land bank will recoup a minimum amount of funds.²⁸⁷ For example, the land bank may want to sell a property to a developer for \$1 to build affordable housing, but then this property would essentially generate no property taxes.²⁸⁸ Or land banks may want to convey single family homes for a lower selling price, but that would result in lower property taxes and lower funds for the land banks.²⁸⁹ In rural areas, property taxes tend to be lower, which may hamstring rural land banks.²⁹⁰ It may balance out in rural areas since property costs are also lower, but if rural land banks have to cover the cost of acquisition and demolition, tax remittance is unlikely to cover both costs.²⁹¹

Moreover, this mechanism does not meet the needs of land banks.²⁹² For instance, Genesee County Land Bank's operating budget is \$9 million.²⁹³ A 5/50 tax remittance would only result in \$50,000 annually for GCLB.²⁹⁴

3. *Value Capture*

Another common funding mechanism is a value capture funding source or relying on property sales.²⁹⁵ It works in the following way: a land bank acquires

281. *Id.*

282. *Id.*

283. *Id.*

284. Illinois chose this formula in its proposed legislation. H.R. 1195, 96th Gen. Assemb., Reg. Sess. (Ill. 2009).

285. Zoom Interview with Brent Denzin, *supra* note 18.

286. Zoom Interview with Matt Kreis, Gen. Couns., Ctr. for Cmty. Progress (Dec. 21, 2020).

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.*

292. Abdelazim, *supra* note 160.

293. *Id.*

294. *Id.*

295. *Id.*

a property with a clean title through a petition for declaration of abandonment, which costs approximately \$5,000.²⁹⁶ The land bank then sells the property to a family for \$20,000 and retains the \$15,000 profit.²⁹⁷ Genesee County Land Bank generates approximately \$1 million in revenue through property sales.²⁹⁸

For value capture to be effective, it needs to be at the metropolitan level or at least in a diverse real estate market, meaning the market includes not only “junk” properties but also properties with some market value.²⁹⁹ Land banks then rely on a strategy known as “cross-collateralization.”³⁰⁰ Land banks sell the more-desired properties for the highest possible selling price in order to generate funds to rehabilitate or demolish the low-value properties.³⁰¹ For an area like Cook County, this is a reliable funding stream, because the market is large and diverse enough and there are families ready to jump into houses.³⁰² This funding mechanism is less reliable in an area where the population is decreasing, the town needs to downsize, and the market is laden with “junk” properties.³⁰³

Even for Cook County, there are drawbacks to relying solely on value capture.³⁰⁴ First, this mechanism prioritizes certain properties (properties with higher resale value) over others, meaning CCLBA only focuses on one of its priorities, neighborhood revitalization, at the expense of its other priorities.³⁰⁵ This mechanism encourages profit maximization but does so at the expense of equity.³⁰⁶ It creates a cycle where properties in more stable, stronger housing neighborhoods are prioritized over the weakest neighborhoods.³⁰⁷ Second, CCLBA has an incentive to avoid the acquisition of vacant lots, which require a higher investment than a rehab property.³⁰⁸ Third, CCLBA has an incentive to

296. Zoom Interview with Brent Denzin, *supra* note 18. The declaration process differs among the states, but a general overview involves the municipality giving notice to owners of the lien, a judicial hearing, and then a redemption period. If the court finds the property is abandoned, it will grant the municipality a judicial deed, which clears the property of any debts and liens. The municipality can then transfer the property to the land bank through an intergovernmental agreement.

297. *Id.*

298. GASTEYER ET AL., *supra* note 28, at 29.

299. *Id.*

300. Abdelazim, *supra* note 160.

301. *Id.*

302. Zoom Interview with Brent Denzin, *supra* note 18.

303. *Id.*

304. *Id.*

305. *Id.* CCLBA’s other priorities are affordable housing, economic development, and conservation.

306. Abdelazim, *supra* note 160.

307. *Id.*

308. *Id.* According to the National Association of Home Builders, the national average cost to build a single-family home was \$289,415 in 2015. For the same year, the national average sale price for an existing single-family house was \$223,900. Heather Taylor, *Cost of Constructing a Home*, NAT’L ASS’N OF HOME BUILDERS (Nov. 2, 2015), <https://www.nahbclassic.org/generic.aspx?genericContentID=248306> [<https://perma.cc/42BW-NGGR>]; NAT’L ASS’N OF REALTORS, *MEDIAN SALES PRICE OF EXISTING SINGLE-FAMILY HOMES FOR METROPOLITAN AREAS* (2016).

avoid demolition properties, which also require a higher investment cost.³⁰⁹ CCLBA, therefore, cannot afford to prioritize affordable housing or to reuse the land for environmental conservation since it is dependent on making a profit off its properties.³¹⁰ Lastly, value capture is always captive to the market making it impossible for a land bank to predict with certainty its revenue for the next year, let alone a few years in the future.³¹¹

4. Fees

Land banks need a stable source of revenue to allow for future redevelopment and long-term planning to combat the decades of disinvestment.³¹² Local governments could create a new fee or raise an existing fee, such as a recording fee or transfer fee, by a percentage or two in order to create an annual, reliable funding stream.³¹³

5. Bonds

When governments need to raise money, a tried and true mechanism is the selling of bonds.³¹⁴ Municipal bonds can either be general obligation bonds or revenue bonds.³¹⁵ General obligation bonds are issued to cover expenses and are paid back by using tax resources.³¹⁶ Revenue bonds are issued to raise funds for a particular project and are paid back from the revenue raised through the project.³¹⁷ Macon-Bibb County, Georgia began issuing “blight bonds” in 2015 to fund the Macon-Bibb County Land Bank Authority.³¹⁸ The county’s Urban Development Authority approved \$14 million in the first round and officials are exploring a second round.³¹⁹

The selling of bonds, however, is something very few land banks have done even though many have the authority to do so.³²⁰ And some land banks that once had the authority no longer do.³²¹ Nebraska passed state-enabling land bank legislation in 2013 creating the Omaha Land Bank.³²² Last year, Nebraska’s

309. Zoom Interview with Brent Denzin, *supra* note 18. The average cost to demolish a 1,500-square-foot-home in a city is roughly \$18,000. Costs are lower in rural areas. Cati O’Keefe, *How Much Does It Cost to Demolish a House?*, HOMEADVISOR (Aug. 23, 2021), <https://www.homeadvisor.com/cost/landscape/house-demolition> [https://perma.cc/339V-L9XK].

310. Zoom Interview with Matt Kreis, *supra* note 286.

311. Abdelazim, *supra* note 160.

312. *Id.*

313. Zoom Interview with Matt Kreis, *supra* note 286.

314. Nick Lioudis, *The Basics of Municipal Bonds*, INVESTOPEdia (July 30, 2021), <https://www.investopedia.com/investing/basics-of-municipal-bonds/> [https://perma.cc/SE5H-4QZT].

315. *Id.*

316. *Id.*

317. *Id.*

318. Abdelazim, *supra* note 160.

319. *Id.*

320. Zoom Interview with Matt Kreis, *supra* note 286.

321. Telephone Interview with Dan Quick, Former State Senator, Neb. Legis. (Jan. 14, 2021).

322. *Id.*

Unicameral passed legislation expanding land banks to the rest of the state.³²³ The original land bank legislation allowed municipalities to use revenue bonds to support the land bank but not general obligation bonds.³²⁴ Interestingly, the new piece of legislation no longer permits land banks to have access to either type of bond.³²⁵

6. *Private Funding*

Another option for land banks is to leverage private funding.³²⁶ The Twin Cities Community Land Bank, now called the Land Bank Twin Cities (“LBTC”), was created using funds from a Minnesota family foundation.³²⁷ It also offsets demolition costs by accepting donations from financial institutions.³²⁸

The picture in the Twin Cities, however, is much different than its Midwest counterparts.³²⁹ First, the population in the Twin Cities has been static, resulting in a high demand for housing and little need for blight reduction.³³⁰ Second, most of the vacant and abandoned homes in the Twin Cities after the housing foreclosure crisis were bank-owned properties as opposed to tax delinquent homes.³³¹ The county and city could handle on their own the couple hundred tax delinquent foreclosed properties.³³² The issue in the Twin Cities was working with banks to get their foreclosed homes back into the hands of community developers.³³³ When a property is tax delinquent, the local government unit can transfer the property to a land bank for free.³³⁴ The land bank then only covers the cost to clean the title.³³⁵ For bank-owned properties, the banks decide the selling price.³³⁶ Some may sell the property to the land bank for just \$1, but the average price is closer to \$70,000 since bank-owned properties tend to maintain their market value.³³⁷ Partnering with the National Community Stabilization Trust, the LBTC was able to serve as an intermediary between financial institutions and affordable housing developers, allowing developers early access to properties at a discount.³³⁸

323. *Id.*

324. *Id.*

325. *Id.*

326. Zoom Interview with Matt Kreis, *supra* note 286.

327. *Family Housing Fund: Home Prosperity Fund*, MCKNIGHT FOUND. (Nov. 2017), <https://www.mcknight.org/impact-investment/family-housing-fund/> [https://perma.cc/Y6V8-YHXX].

328. Jacob Wascalus, *Twin Cities Organization Expands Role of Land Banks*, FED. RSRV. BANK OF MINNEAPOLIS (Apr. 1, 2012), <https://www.minneapolisfed.org/article/2012/twin-cities-organization-expands-role-of-land-banks> [https://perma.cc/SKY4-KSDX].

329. *Id.*

330. *Id.*

331. *Id.*

332. *Id.*

333. *Id.*

334. *Id.*

335. *Id.*

336. *Id.*

337. *Id.*

338. *Id.*

Thanks to the efforts of the land bank and market conditions, the Twin Cities housing market rebounded quite quickly.³³⁹ With the residential market relatively stable, the LBTC had to decide whether it was time to close their doors or shift missions.³⁴⁰ LBTC decided to shift their focus to the commercial real estate landscape and now helps mission-driven developers and nonprofit organizations compete with cash heavy land speculators and private equity.³⁴¹ With \$18 million of properties in its portfolio, the land bank is able to use its balance sheet to access additional financing, which it then passes on to community developers or nonprofits.³⁴²

In Denver, the Urban Land Conservancy (“ULC”) leverages partnerships with local foundations and financial institutions to create multimillion dollar investment funds.³⁴³ These funds then become a revolving source of loan capital growing over the years.³⁴⁴ In Huntington, West Virginia, the Huntington Urban Renewal Authority’s Land Bank program received a \$1.5 million line of credit from a local bank to kickstart its program.³⁴⁵

Regardless of the setup, private funding, on its own, is unlikely to be a saving grace for downstate land banks.³⁴⁶ First, municipalities outside of Chicago have less access or connection to multibillion dollar foundations or large financial institutions.³⁴⁷ Second, the market conditions in Denver and the Twin Cities are vastly different than what Illinois cities and towns are experiencing.³⁴⁸ Denver and Twin Cities are looking to preserve affordable housing and community organizations that could be sold on a hot market.³⁴⁹ Most parts of Illinois, particularly downstate, do not share that problem.³⁵⁰

C. *Preemptive or Grandfathered Legislation*

The author uses preemptive legislation to refer to legislation which would override all existing land bank legislation throughout the state and, more or less,

339. Oscar Perry Abello, *Twin Cities Land Bank Using Its Balance Sheet to Protect Vulnerable Communities*, NEXT CITY (June 30, 2020), <https://nextcity.org/daily/entry/twin-cities-land-bank-using-balance-sheet-protect-vulnerable-communities> [https://perma.cc/D4XJ-JTUG].

340. *Id.*

341. *Id.*

342. *Id.*

343. *How We Do Our Work*, URB. LAND CONSERVANCY, <https://www.urbanlandc.org/how-we-do-our-work/> (last visited Jan. 14, 2022) [https://perma.cc/R3FL-YY9F].

344. *Id.*

345. Bryan Chambers, *Land Bank Plays Role in Improving City Housing*, HERALD DISPATCH (Oct. 17, 2015), https://www.herald-dispatch.com/news/recent_news/land-bank-plays-role-in-improving-city-housing/article_1be72a4a-d425-5fa3-bc61-4abebf1ffa88.html [https://perma.cc/7ZTF-SG25].

346. Zoom Interview with Matt Kreis, *supra* note 286.

347. *Id.*

348. Eric Roper, *Twin Cities Population Growth Lags Other Major U.S. Cities*, STAR TRIB. (Apr. 2, 2017, 6:53 AM), <https://www.startribune.com/twin-cities-population-growth-lags-other-major-u-s-cities/417874533/> [https://perma.cc/9B46-A47K].

349. Abello, *supra* note 339; URB. LAND CONSERVANCY, *supra* note 343.

350. Zoom Interview with Matt Kreis, *supra* note 286.

start over. Grandfathered legislation would attempt to build upon—as opposed to override or conflict with—existing legislation.³⁵¹

At first glance, preemptive legislation may make the most sense. First, Illinois already has prior legislation that could easily be revitalized.³⁵² Second, Michigan and Ohio, the land bank trendsetters, both created their systems with intricate, head-to-toe legislation.³⁵³ Preemptive legislation, however, may do more harm than good. First, although Michigan and Ohio’s legislations were intricate, they also were extremely difficult to draft “and nearly impossible for a casual observer to decipher.”³⁵⁴ For example, Michigan’s legislation included a complete overhaul of the state’s tax foreclosure system.³⁵⁵ Second, it is possible that current land banks may lose some of their powers if the General Assembly relitigates the whole bill.³⁵⁶

Preemptive legislation is not the only option, however. Nebraska passed its first piece of land bank legislation in 2013.³⁵⁷ It originally was meant to be a statewide bill but eventually was compromised to only create a land bank in Omaha.³⁵⁸ Sensing the need for land banks in the rest of the state, Nebraska passed additional land bank legislation last year.³⁵⁹ The new piece of legislation created a carve out for Omaha except for one change regarding how long a land bank can hold onto property.³⁶⁰ Otherwise, Omaha Land Bank was unaffected by the new piece of legislation.³⁶¹

The General Assembly should look to codify the Cook County ordinance and the existing land bank authorities’ intergovernmental agreement language, and then build on it with a dedicated funding source and streamlined processes.³⁶² It could create carve outs for the existing land bank authorities if necessary to protect their current powers.³⁶³

IV. RECOMMENDATION

While amid a global pandemic, it is hard to predict the long-term impact on local governments and communities. At the beginning of the pandemic, it appeared certain local and state governments were facing immediate and potentially devastating financial shortfalls due to loss of revenue during lockdowns,

351. As defined by the author.

352. See H.R. 1195, 96th Gen. Assemb., Reg. Sess. (Ill. 2009).

353. ALEXANDER, *supra* note 12, at 20.

354. *Id.* at 21.

355. *Id.* at 20.

356. Zoom Interview with Brent Denzin, *supra* note 18.

357. Telephone Interview with Dan Quick, *supra* note 321.

358. *Id.*

359. *Id.*

360. *Id.*

361. *Id.*

362. Zoom Interview with Brent Denzin, *supra* note 18.

363. *Id.*

plus the extra expense of expanded public health services.³⁶⁴ Almost a year into the pandemic, state budgets are not as dire as expected.³⁶⁵ Due to the crisis's disproportionate impact on low-income workers, state budgets funded mainly through income tax revenues were buoyed by relatively insulated high-income earners.³⁶⁶ The local government picture is a lot less clear since “the data is too disparate.”³⁶⁷

President Biden’s Covid-19 stimulus package, which includes \$350 billion in funding assistance for state and local governments, passed both chambers of Congress and was signed by the President on March 11, 2021.³⁶⁸ The State of Illinois will receive \$7.5 billion in direct aid with another almost \$6 billion going to local governments.³⁶⁹ The aid comes with few spending restrictions, sparking conversations on allocation.³⁷⁰ Illinois Comptroller Susana Mendoza said the money will first go to “pay back money we borrowed from the Federal Reserve for the state’s COVID and other medical expenses during this pandemic”³⁷¹ Some lawmakers have already expressed interest in using the funds to help the overwhelmed unemployment system; others want to put it towards education.³⁷² There has been no mention of using the funds to revitalize neighborhoods or develop more affordable housing.³⁷³

According to Chicago Mayor Lori Lightfoot, local government aid will come through specific grants, and it is unclear at this point what requirements

364. See Press Release, Ill. Dep’t of Com. & Econ. Opportunity, *supra* note 118; Louise Sheiner & Sophia Campbell, *How Much is Covid-19 Hurting State and Local Revenues?*, BROOKINGS (Sept. 24, 2020), <https://www.brookings.edu/blog/up-front/2020/09/24/how-much-is-covid-19-hurting-state-and-local-revenues/> [<https://perma.cc/2PZ8-EAQU>] (projecting \$155 billion revenue lost in 2020, \$167 billion in 2021, and \$145 billion in 2022).

365. Andrew Prokop, *The Debate Over State and Local Aid in Biden’s Stimulus Bill, Explained*, VOX (Mar. 1, 2021, 8:00 AM), <https://www.vox.com/22301420/congress-pandemic-relief-state-local-aid> [<https://perma.cc/G2L3-7FND>].

366. *Id.* Impact has not been even across States, however. States who rely on tourism, oil, or sales tax have been hit hard.

367. *Id.*

368. Andrew Duehren & Kristina Peterson, *House Passes \$1.9 Trillion Covid-19 Stimulus Bill; Biden to Sign Friday*, WALL ST. J. (Mar. 10, 2021, 6:12 PM), <https://www.wsj.com/articles/house-set-to-approve-covid-19-relief-bill-11615372203> [<https://perma.cc/A3YG-L7GH>]; Jacob Pramuk, *Biden Signs \$1.9 Trillion Covid Relief Bill, Clearing Way for Stimulus Checks, Vaccine Aid*, CNBC (Mar. 11, 2021, 3:03 PM), <https://www.cnbc.com/2021/03/11/biden-1point9-trillion-covid-relief-package-thursday-afternoon.html> [<https://perma.cc/ZM95-Z4AU>].

369. About a third of the \$6 billion earmarked for local governments will go to Chicago. Dan Petrella & Gregory Pratt, *Illinois in Line for \$7.5 Billion in Federal Aid from COVID-19 Relief Package Biden Is Expected to Sign This Week*, CHI. TRIB. (Mar. 10, 2021, 6:21 PM), <https://www.chicagotribune.com/coronavirus/ct-covid-relief-illinois-20210310-ykjrpfxfvd67jqysjitrspnia-story.html> [<https://perma.cc/4QL4-MEGW>]; *5 to Know: What the \$1.9 Trillion Stimulus Bill Does for Americans, Illinoisans*, NBC CHI. (Mar. 11, 2021, 3:43 PM), <https://www.nbcchicago.com/news/coronavirus/5-to-know-what-the-1-9-trillion-stimulus-bill-does-for-americans-illinoisans/2459691/> [<https://perma.cc/9UZ7-7XUP>]. Total Illinois aid is approximately \$13.2 billion with \$5.5 billion earmarked for local governments.

370. See Petrella & Pratt, *supra* note 369.

371. *Id.*

372. *Id.*

373. *Id.*

those will have.³⁷⁴ But what is clear is local governments are likely to face a higher inventory of vacant buildings when all is said and done.³⁷⁵ Land banks could kickstart the recovery in some of the hardest hit communities.³⁷⁶

Illinois should pass state-enabling legislation that includes the following components: a clear definition of what a land bank is, a permanent financing structure independent of sale revenues, and a more streamlined tax foreclosure process. It is essential that this legislation does not take away any of the powers the existing authorities already enjoy. Rather, it should codify those structures and build on them.

A. Land Bank Definition

Any Illinois land bank legislation must include a clear definition of who can form a land bank and how. Legislation should always include clear definitions, but when money is involved, these specifications are critical. Ideally, any final Illinois legislation should include a consistent and dedicated land bank funding source, which means there must be a way to limit or at least control who can assess these funds. This money will go quickly if it is a free-for-all.

Some states take the approach of limiting how many land banks can exist at one time.³⁷⁷ This approach has a few variations. For example, in Ohio, it started as a pilot program.³⁷⁸ Ohio crafted their initial legislation for “a county with a population exceeding 1.2 million.”³⁷⁹ In 2008, there was only one county fitting that description: Cuyahoga County.³⁸⁰ The next biggest county, Franklin County, was below the 1.2 million threshold.³⁸¹ Ohio continued to cherry-pick other counties in supplemental legislation.³⁸² Ohio House Bill 313 “authorize[d] a county with a population greater than 100,000, or a population between 78,000 and 81,000.”³⁸³

New York, on the other hand, initially limited the number of land banks to ten but did not go so far as to designate which ones.³⁸⁴ It permitted any foreclosing government unit, also known as a tax district, the ability to pass a local law,

374. *Id.*

375. Danielle Lewinski, *Preventing Post-COVID-19 Vacancy: 6 Interventions Local Governments Should be Thinking About Now*, CTR. FOR CMTY. PROGRESS (Aug. 21, 2020), <https://communityprogress.org/preventing-post-covid-19-vacancy-6-interventions-local-governments-should-be-thinking-about-now/> [https://perma.cc/T9PE-683H].

376. Kim Graziani & Tarik Abdelazim, *From the Great Recession to COVID-19: Land Banks are Critical to Long-Term Equitable Recovery*, CTR. FOR CMTY. PROGRESS (June 1, 2020), <https://communityprogress.org/great-recession-covid19-land-banks-critical-longterm-equitable-recovery/> [https://perma.cc/47DP-5HBC].

377. ALEXANDER, *supra* note 12, at 22.

378. *Id.*

379. S.B. 353, 127th Gen. Assemb., Reg. Sess. (Ohio 2009).

380. *County Intercensal Tables: 2000-2010*, U.S. CENSUS BUREAU (Apr. 12, 2017), <https://www.census.gov/data/tables/time-series/demo/popest/intercensal-2000-2010-counties.html> [https://perma.cc/K5U3-GMJG].

381. *Id.* (Franklin County’s population in 2008 was estimated to be 1.14 million).

382. H.B. 313, 128th Gen. Assemb., Reg. Sess. (Ohio 2010).

383. *Id.* (emphasis added).

384. A.B. 373, 2011–12 Leg., Reg. Sess. (N.Y. 2011).

ordinance, or resolution forming a land bank and to submit it to the Urban Development Corporation for review and approval.³⁸⁵ New York has since raised the quota to thirty-five.³⁸⁶

Michigan did not limit the number of land banks but limited who could form a land bank.³⁸⁷ Only a county foreclosing governmental unit or a qualified city is eligible to enter into an intergovernmental agreement with the state land bank authority.³⁸⁸ In Michigan, a qualified city must contain a first-class school district and a department or agency of the city.³⁸⁹

Illinois has an interest in limiting land banks.³⁹⁰ But a pilot program with a fixed number sends the message that vacant and abandoned property is limited to only certain areas within the state. Instead of establishing a set number of land banks, Illinois should limit participation to the county level and require at least two counties and a home rule municipality with a grandfather clause for Cook County Land Bank and Lake County Land Bank.

Since three of the five existing Illinois land bank authorities are already regional, it is fitting to encourage a regional land bank approach as opposed to permitting individual municipality land banks.³⁹¹ First, individual municipality land banks would put an immediate strain on any dedicated funding source.³⁹² Second, regional land banks will encourage municipalities to work together across county lines.³⁹³ The statute, therefore, should ensure that the necessary jurisdictions have the authority to enter into intergovernmental agreements. Third, it is important the existing land bank structures are not disrupted. Fourth, to assuage any concerns over the loss of local autonomy, the definition should be modified to change the words “to serve” or “to act on behalf” to “work towards achieving the goals of.”³⁹⁴

Sample statutory language is below:

1. Two or more counties and at least one home rule municipality may elect to create a Land Bank by entering into an intergovernmental cooperation agreement under § 3 of the Illinois Intergovernmental Cooperation Act —5 ILCS 220/3³⁹⁵—that creates a single Land Bank to work towards achieving the goals of all members.
2. A county or municipality may elect to join an existing land bank by entering into an intergovernmental cooperation agreement.

385. *Id.*

386. *See* N.Y. NOT-FOR-PROFIT CORP. LAW § 1613 (Consol. 2020).

387. MICH. COMP. LAWS § 124.773 (2004).

388. *Id.*

389. *See id.*

390. Email Interview with Mike Davis, *supra* note 216.

391. *See id.*

392. *See id.*

393. *Id.*

394. *Id.*

395. 5 ILL. COMP. STAT. 220/3 (2007) (“Any power or powers, privileges, functions, or authority exercised or which may be exercised by a public agency of this State may be exercised, combined, transferred, and enjoyed jointly with any other public agency of this State . . .”).

3. This provision does not apply to land banks in existence before Effective Date.

Residents of smaller counties may worry their interests will be overlooked in a regional entity.³⁹⁶ But in *Avery v. Midland County*, the Court held that the principle of one person, one vote is extended only to *general purpose* local governments who exercise “general governmental powers over the entire geographic” territory.³⁹⁷ Therefore, a regional special district land bank could be composed of equal representatives from each county regardless of population, essentially ensuring smaller counties have the same representation on the land bank board as larger counties.³⁹⁸

Along with a clear definition of what entities can qualify as a land bank, the statute should include a list of top land reuse priorities a land bank could support, while leaving the ultimate decision of how to rank these priorities to the local government(s) that form the land bank. Lastly, the statute should require that each land bank has transparency requirements in its founding intergovernmental agreement, particularly the makeup of the land bank’s board directors, ethics protocol, and open-meeting guidelines.³⁹⁹ Prior Illinois legislation provided the board of directors must be an odd number greater than five and less than eleven.⁴⁰⁰ Depending on the funding mechanism, it may make sense for county treasurers to have designated positions on the land banks’ board of directors since tax assessment and collection often rests with them.⁴⁰¹

B. *A Stable and Permanent Financing Structure*

“The success of a land bank is almost directly proportional to the level of funding it receives.”⁴⁰² It is, therefore, essential that any state-enabling land bank legislation includes a predictable, permanent funding source. As discussed, Ohio’s Delinquent Tax and Assessment Collection Fund is the best existing option.⁴⁰³

In Illinois, tax collection is not as straightforward as in Ohio.⁴⁰⁴ In some Illinois counties, three county offices have their hands in the property tax system.⁴⁰⁵ Some refer to county assessors, treasurers, and clerks as a three-legged stool.⁴⁰⁶ The assessor starts the processes and determines the market value of property within the county, which will determine how much an owner is expected

396. See BRIFFAULT & REYNOLDS, *supra* note 48, at 116.

397. 390 U.S. 474, 484–85 (1968).

398. See BRIFFAULT & REYNOLDS, *supra* note 48, at 116; see, e.g., *City of St. Albans v. Nw. Reg’l Plan. Comm.* 708 A.2d 194, 199 (Vt. 1998).

399. GCLBA, *supra* note 139; GASTEYER ET AL., *supra* note 28, at 32–33.

400. H.R. 1517, 99th Gen. Assemb., Reg. Sess. (Ill. 2015).

401. Zoom Interview with Holly Kim & Vasyl Markus, *supra* note 57.

402. Abdelazim, *supra* note 160.

403. See discussion *supra* Section III.B.1.

404. Zoom Interview with Holly Kim & Vasyl Markus, *supra* note 57.

405. *Id.*

406. *Id.*

to pay each year in property taxes.⁴⁰⁷ The treasurer's office collects the property taxes and any late interest.⁴⁰⁸ County treasurers then disburse the property taxes to the taxing districts accordingly.⁴⁰⁹ Late interest is not distributed among the taxing districts and instead goes into the county's general fund.⁴¹⁰ In Lake County, the treasurer's office collects \$3 million to \$3.5 million annually in interest.⁴¹¹ After the taxes go unpaid for a year, the treasurer's office places a lien on the property, and it then becomes the jurisdiction of the clerk's office.⁴¹² The treasurer's office is the one who would sell the property at a sales auction or collect any lien redemption monies.⁴¹³ In Illinois, counties may run Trustee Tax programs where they serve as "trustee for all taxing districts" and can pick up the certificate for any delinquent properties not bid on at the sale auction.⁴¹⁴ After the certificate is held for the duration of the constitutional redemption period (at least two years for residential), the county then receives ownership and can transfer it to a municipality or sell the property to private hands.⁴¹⁵ By the time this process is complete, at least three and a half to four years have passed since the taxes became delinquent.⁴¹⁶

In the current system, there are two potential ways to generate permanent funds for land banks. Both the treasurer's and clerk's offices collect multiple fees throughout the delinquency process, which are used to supplement the general appropriation they receive from the county board.⁴¹⁷ State-enabling legislation could create an additional fee to be added at the point of sale and all proceeds could be directed to the land bank.⁴¹⁸

There are a couple of problems with this option. First, taxpayers will be unhappy or hesitant at best for the creation of a new fee even if most taxpayers may never pay it.⁴¹⁹ Second, few delinquent properties are sold each year.⁴²⁰ In Lake County, the treasurer's office places between 2,500 to 3,500 liens per year.⁴²¹ Of those, only about 400 end up in the County of Lake Trustee ("COLT") program, and only about 10–20% of those properties are sold.⁴²² In order to

407. *Contact Your Assessor*, LAKE CNTY., <https://www.lakecountyil.gov/3266/Contact-Your-Assessor> (last visited Jan. 14 2022) [<https://perma.cc/8SJQ-9JEZ>].

408. Zoom Interview with Holly Kim & Vasyl Markus, *supra* note 57.

409. *Id.*

410. *Id.*

411. *Id.*

412. *Delinquent Taxes & Prior Years Sold*, LAKE CNTY., <https://www.lakecountyil.gov/509/Delinquent-Taxes-Prior-Years-Sold> (last visited Jan. 14, 2022) [<https://perma.cc/3GEL-L2G8>].

413. Zoom Interview with Holly Kim & Vasyl Markus, *supra* note 57.

414. *Id.*; 35 ILL. COMP. STAT. 220/21-90 (1995).

415. Zoom Interview with Holly Kim & Vasyl Markus, *supra* note 57; 35 ILL. COMP. STAT. 220/21-90 (1995).

416. Email Interview with Brent Denzin, Legal Couns., Cook Cnty. Land Bank Auth. and S. Suburban Land Bank & Dev. Auth. (Apr. 8, 2021).

417. Zoom Interview with Holly Kim & Vasyl Markus, *supra* note 57.

418. *Id.*

419. *Id.*

420. *Id.*

421. *Id.*

422. *Id.*

generate the amount of money necessary to operate a land bank, the fee would have to be exorbitantly high, which may discourage potential buyers for these delinquent properties.⁴²³

The second option is to allow counties to direct a percentage of their late interest monies to land banks like DTAC.⁴²⁴ Unlike Ohio, the pot of money is smaller since it does not include any penalty fees charged by private tax buyers;⁴²⁵ Illinois's legislation may want to allow counties to designate as much as 10% of interest collected.

This option is not without its concerns. First, it may be tricky since the recommended legislation encourages regional land banks. If three counties form a land bank but only two county boards designate funds, a free rider problem is created.⁴²⁶ On the other hand, mandating the designation may be a nonstarter since it preempts local control. This is more likely to be a problem for existing land banks than future ones since future land banks can make formation contingent on each county board passing or not passing the designation.⁴²⁷

Second, there needs to be the political will at the county level to make the decision to reallocate a portion of these funds to the land bank.⁴²⁸ While it may be an uphill battle, it can happen. Ohio's state-enabling land bank legislation did not require counties to allocate a portion of their delinquent taxes to land banks, yet about two-thirds of Ohio's counties voluntarily agreed to adopt the procedure.⁴²⁹ The first step after passage, therefore, is to educate the "three-legged stool": county treasurers, clerks, and assessors.⁴³⁰ In order for land banks to truly be successful, there must be buy-in at the local level, first with county officials and then community members.⁴³¹

The revenue generated from late interest is unlikely to cover all the land bank's operating costs, but it can create a stable, permanent stream that can help land banks plan for and complete some of their more costly tasks, such as blight reduction, maintenance, and rehab.⁴³²

423. *Id.*

424. *Id.*

425. *Id.*

426. See Erika Rasure, *Free Rider Problem*, INVESTOPEDIA (Dec. 29, 2020), https://www.investopedia.com/terms/f/free_rider_problem.asp [<https://perma.cc/XJ8B-QKUH>].

427. Zoom Interview with Holly Kim & Vasyl Markus, *supra* note 57.

428. *Id.*

429. Abdelazim, *supra* note 160.

430. Zoom Interview with Holly Kim & Vasyl Markus, *supra* note 57.

431. *Id.*

432. *Id.*

C. Streamlined Foreclosure Processes⁴³³

While a permanent, stable funding stream will permit land banks to develop longer-term plans and to focus on more costly priorities, such as blight reduction, legislation should also include changes to the tax foreclosure system to make land acquisition and disposition more streamlined and efficient. Existing land banks in high demand areas, such as the Cook County Land Bank, face long periods of low inventory due to the bottlenecks in the tax sale process.⁴³⁴

Illinois should follow the lead of New Jersey and New York and shift to a *in rem* tax foreclosure jurisdiction that limits the right of redemption.⁴³⁵ Legal proceedings can be against a person or a property.⁴³⁶ Property proceedings can be further divided into *in rem* or *quasi in rem*.⁴³⁷ In *quasi in rem* cases, the judgment binds only the parties to the litigation, whereas *in rem* judgments bind the entire world.⁴³⁸ “[I]n rem jurisdiction operates directly on the property and the court’s judgment is effective against all persons who have an interest in the property.”⁴³⁹

Illinois law treats tax foreclosures and mortgage foreclosures differently.⁴⁴⁰ The Illinois Supreme Court concluded that Illinois mortgage foreclosure proceedings are *quasi in rem* actions in *ABN AMRO Mort. Grp., Inc. v. McGahan*.⁴⁴¹ The McGahan Court determined its outcome was consistent with the Illinois Mortgage Foreclosure Law,⁴⁴² which requires a mortgagor as a “necessary party.”⁴⁴³ The Illinois Property Tax Code, however, specifies “[a]n action to foreclose the lien for delinquent taxes under this Code is an action *in rem*.”⁴⁴⁴

The Illinois General Assembly should take it a step further and pass a statute similar to New Jersey’s *In Rem Tax Foreclosure Act* in order to expedite the foreclosure process.⁴⁴⁵ The New Jersey legislature “declared that: ‘[the In Rem Tax Foreclosure Act] shall be liberally construed as remedial legislation to

433. The author acknowledges that overhauling Illinois’s tax enforcement system is a huge political lift and likely to require separate legislation. She includes it, however, to show all the changes that need to occur to maximize land bank’s potential impact.

434. Zoom Interview with Sarah Ware, *supra* note 164; Email interview with Brent Denzin, *supra* note 416 (“CCLBA has 600+ properties and growing each month, but there are waves where they get only 50 properties over 6 months because the process is bottlenecked. This throws off cash flow.”).

435. N.J. STAT. ANN. § 54:5-104.29 et. seq. (West 1948); N.Y. REAL PROP. TAX LAW § 1122 (McKinney 2020).

436. *Pennyroyer v. Neff*, 95 U.S. 714, 725 (1877).

437. *ABN AMRO Mortg. Grp., Inc. v. McGahan*, 931 N.E.2d 1190, 1195 (Ill. 2010).

438. *Id.*

439. Ellen F. Friedman, *The Constitutionality of Request Notice Provisions in In Rem Tax Foreclosures*, 56 *FORDHAM L. REV.* 1209, 1217 n.48 (1988).

440. *Compare* 735 ILL. COMP. STAT. 5/15-1501 (2016), with 35 ILL. COMP. STAT. 200/21-75 (2001).

441. *McGahan*, 931 N.E.2d at 1196.

442. 735 ILL. COMP. STAT. 5/15-1501 (2016).

443. *McGahan*, 931 N.E.2d at 1196.

444. 35 ILL. COMP. STAT. 200/21-75 (2001) (emphasis added).

445. N.J. STAT. ANN. § 54:5-104.29 et. seq. (West 1948).

encourage the barring of rights of redemption.”⁴⁴⁶ Once the foreclosure period has passed, the foreclosure judgment is final and shall not be reopened.⁴⁴⁷ A complete redemption bar, however, is unlikely to be received positively in Illinois due to the difference in delinquency length.⁴⁴⁸ New Jersey’s In Rem Foreclosure Act is “invoked after four years of nonpayment of general land taxes.”⁴⁴⁹ In Illinois, the property is forfeited after two years of nonpayment.⁴⁵⁰ Lastly, a statute would not suffice since it is a constitutional requirement to provide a minimum redemption period.⁴⁵¹

Another option for Illinois is to update its tax code and adopt some of New York’s beneficial provisions.⁴⁵² First, the State of New York created an optional tax foreclosure procedure.⁴⁵³ “Nothing in the statute forecloses the establishment of local *in rem* foreclosure procedures by the adoption of special acts.”⁴⁵⁴ Second, the State of New York recommends two redemption periods: a two-year period for vacant properties and a longer period for residential or farm property.⁴⁵⁵ New York City established a one-year foreclosure period.⁴⁵⁶ Third, the State of New York starts the redemption clock, earlier than Illinois, on the lien date.⁴⁵⁷ Ten months after the lien date, the taxing district publishes notice and all interested parties have until the end of the redemption period to pay the delinquent taxes.⁴⁵⁸ In New York City, the redemption period starts after filing the list of delinquent properties and can possibly close as early as ten weeks after the first publication of the public notice.⁴⁵⁹ In Illinois, the redemption period does not start until after the tax sale.⁴⁶⁰ Illinois should eliminate scavenger sales and start the redemption clock after the annual sale. Starting the redemption period earlier while keeping the same length will allow shorter time periods between delinquency and actual foreclosure without shortchanging property owners.⁴⁶¹

Starting the redemption clock earlier may raise due process concerns under the Fifth Amendment since it involves the deprivation of a person’s property.⁴⁶² Courts, however, do not seem to have an issue with the shorter redemption period

446. *Lakewood Twp. v. Block 251, Parcel 34, Lots 3359 to 3370 Incl.*, 138 A.2d 768, 771 (N.J. Super. Ct. App. Div. 1958).

447. *Id.*

448. *See id.*; 35 ILL. COMP. STAT. 200/21-75 (2013).

449. *Lakewood Twp.*, 138 A.2d at 771.

450. 35 ILL. COMP. STAT. 200/21-75 (2013).

451. *See* ILL. CONST. art. IX, § 8.

452. *See* D. KIRK DRUSSEL, MARY ANNE FORAN & MARVIN R. BAUM, MORTGAGES AND MORTGAGE FORECLOSURE IN N.Y. § 43:11.50 (2020).

453. *Id.*

454. *Sonmax, Inc. v. New York*, 43 N.Y.2d 253, 258 (N.Y. 2017).

455. *See* N.Y. REAL PROP. TAX LAW § 1122 (McKinney 2020).

456. N.Y.C., N.Y., CODE § 11-404 (1996) (a three-year period for some residential properties).

457. DRUSSEL ET AL., *supra* note 452, § 43:11.75.

458. *Id.*

459. N.Y.C., N.Y., CODE § 11-406 (1997).

460. 35 ILL. COMP. STAT. 200/21-75 (2013).

461. DRUSSEL ET AL., *supra* note 452, § 43:11.75.

462. *See* Grant S. Nelson, *Constitutional Problems with Power of Sale Real Estate Foreclosure: A Judicial Dilemma*, 43 MO. L. REV. 25, 28 (1978).

as long as the taxing district provides sufficient notice “of the pendency of the foreclosure proceedings.”⁴⁶³ The due process standard for *in rem* actions is provided in *Mullane v. Central Hanover Bank & Trust Co.*, which establishes a “reasonableness” criterion.⁴⁶⁴

Any state-enabling land bank legislation should include a provision detailing what constitutes constitutionally adequate notice. The Supreme Court has two cases establishing the boundaries of a constitutionally adequate notice.⁴⁶⁵ *Mullane* held “[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”⁴⁶⁶ In *Mennonite Board of Missions v. Adams*, the Court held just publishing or posting notice is not constitutionally sufficient.⁴⁶⁷ Personal service or mail is needed to ensure interested parties are notified.⁴⁶⁸ *Mennonite* includes “*dicta* conced[ing] that constructive notice is constitutionally sufficient if the mortgagee is not *reasonably identifiable*.”⁴⁶⁹ Sample statutory language is below:

1. Registered or certified mail to such identity and address as reasonably ascertainable by an inspection of public records;
2. By posting a copy of the notice on the real property; and
3. By publication in a newspaper of general circulation in the municipality in which the property is located.⁴⁷⁰

V. CONCLUSION

Illinois should pass state-enabling legislation to give existing and future Illinois land banks the power to be more flexible, financially stable, and responsive to their communities’ needs. Illinois communities, particularly smaller towns outside of Chicagoland, are likely to see an increase in abandoned properties because of the coronavirus pandemic. Illinois should pass state legislation that builds on the existing land bank structure and includes a clear definition, a permanent financing structure, and a more streamlined tax foreclosure process. If properly executed, the legislation will provide existing land banks more tools to reach their goals while also increasing access to land bank resources to other regions in the state.

463. *Tupaz v. Clinton Cnty.*, 499 F. Supp. 2d 182, 191 (N.D.N.Y. 2007), *aff’d sub nom.* *Miner v. Clinton Cnty.* 541 F.3d 464 (2d Cir. 2008).

464. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314–15 (1950); *Rosewell v. Chi. Title & Tr. Co.*, 459 N.E.2d 966, 968 (Ill. 1984).

465. *Mullane*, 339 U.S. at 318; *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 798–800 (1983).

466. *Mullane*, 339 U.S. at 314.

467. 462 U.S. at 799–800.

468. *Id.*

469. *Rosewell*, 459 N.E.2d at 970.

470. FRANK S. ALEXANDER, *LAND BANKS AND LAND BANKING* 104 (2011).