The Legal Basis for a Land Bank in Kansas

A Discussion of the Legal Requirements and Sample Language
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Local governments across Kansas are interested in ways to manage vacant and derelict land, perhaps even converting that land into sites dedicated as community gardens or open space. In 1996 and 2009, the Kansas Legislature addressed this by authorizing cities to create land banks via ordinance and authorizing counties to create land banks via resolution. This resource discusses the legal requirements set forth by state law and provides sample language to help cities and counties draft an ordinance or resolution establishing a land bank.

Drafting the ordinance or resolution is just an initial step in implementing a land bank in your community. The ordinance or resolution will set forth the legal requirements as well as guide the land bank throughout its initial decision-making. That said, the resolution or ordinance establishing a land bank should eventually be supplemented by bylaws, policies and procedures, and other guiding documents.

What is a land bank?

A land bank is an entity established to manage and dispose of distressed property for the purpose of stabilizing neighborhoods and encouraging the reuse or redevelopment of property. The land bank, as an entity, can purchase and obtain properties that have been abandoned or foreclosed upon, and maintain and facilitate the redevelopment, marketing, and/or disposal of the properties.
Additionally, land banks can acquire properties through donation or purchase. Land banks can exist as independent public legal entities if created as such. They can also be nongovernmental, nonprofit organizations. This resource focuses on land banks that are created by the city or county as a public entity under Kansas law.

**Do land banks only acquire buildings and houses?**

No. In fact, some land banks will only acquire land if it is vacant — meaning, no house, building, or structure on the property.

**EXAMPLE:** The Hutchinson Land Bank currently only acquires vacant properties because of the cost of liability insurance and the cost of maintenance if there were structures on the properties of interest.

**Legal requirements**

As mentioned above, Kansas law grants cities the authority to establish land banks by adopting an ordinance and counties the authority to establish land banks by adopting a resolution. While the land bank law governing cities and the land bank law governing counties are in two separate sections of the Kansas Statutes, the content is extremely similar — in fact almost all of the language governing land banks are verbatim regardless if the land bank is established by a city or county. Therefore, the legal requirements discussed below are required by land banks established by both cities and counties.

The Kansas Legislature has set several requirements for the establishment of a city or county land bank that should be addressed within the ordinance or resolution, including:

- The land bank must be governed by a board of trustees;
- Members of the board of trustees cannot receive compensation (but may be paid their necessary expenses for attending meetings and carrying out their duties);
- The city may dissolve the land bank by ordinance;
- The county may dissolve the land bank by resolution;
- The board of trustees must keep accurate accounts of all receipts and disbursements;
- All records and accounts must be available to public inspection;
- The land bank must make an annual report to the Governing Body, which includes an inventory of all property held by the land bank;
- The board of trustees can sue and be sued; enter into contracts; appoint and remove staff; and
- The board of trustees may accept or refuse to accept any property.
About the sample language

The sample language accompanying this resource includes all of the statutory requirements under Kansas law. Due to the nature of the state statutes governing land banks, the sample language is largely composed of language directly from the state statutes.

While the state statutes provide a general framework for how the land bank should operate, there are several considerations a city or county can make to best structure the land bank for that community’s needs (i.e., who should be a member of the board of trustees). Therefore, the sample language flags provisions that can be tailored (and, in fact, have already been tailored by several different communities in Kansas) to ensure the land bank will operate in a manner most useful for the city or county.

This sample language is based on applicable Kansas land bank laws, as well as land bank ordinances, resolutions, and resources from land banks in Overland Park, Kan.; Hutchinson, Kan.; Wyandotte County, Kan.; Lyons, Kan.; Olathe, Kan.; Greensburg, Kan.; Junction City, Kan.; Kansas City, Mo.; and Cuyahoga, Ohio.

Are there any additional land bank resources?

Frank Alexander’s *Land Banks and Land Banking* (June 2011) covers an array of land bank issues, including financing, governance, and administrative policies. This resource is available at [http://www.communityprogress.net/filebin/Land_Banks_and_Land_Banking_Book.pdf](http://www.communityprogress.net/filebin/Land_Banks_and_Land_Banking_Book.pdf).
Sample language and guidance

SAMPLE ORDINANCE/RESOLUTION NO. XXXX
ESTABLISHMENT OF LAND BANK

BE IT ORDAINED BY THE GOVERNING BODY OF XXXX, KANSAS:

Section 1. Purpose.

The purpose of creating the Land Bank is to implement the authority granted to the Governing Body, by (K.S.A. 12-5901 et seq. or K.S.A. 19-26,104 et seq.) to establish or dissolve a Land Bank by (Ordinance or Resolution). The Land Bank will be a quasi-governmental entity with the primary responsibility and authority for acquiring, maintaining, and selling abandoned property in order to address the problems and issues created by these distressed properties. The Land Bank shall also be responsible for the acquisition of title to real estate, eliminate liabilities for said real estate, and provide proper disposition of acquired property. 16

MORE ON PURPOSE STATEMENTS AND PROVISIONS

While there are several provisions required by Kansas law that direct the responsibilities of the land bank, adding in supplementary provisions addressing the land bank’s objectives and goals is a great way to tailor the ordinance or resolution to advance the needs of your community.

Example: Lyons, Kansas

“The Goal of the Lyons Land Bank is to return tax delinquent property to productive benefiting the community. When considering proposals to the Land Bank, preference will be given to projects that support home ownership, improve the neighborhoods and otherwise advance the economic and social interests of the City of Lyons, Kansas, and its residents.” 17

Example: Kansas City, Missouri

The creation of the Land Bank is intended to help achieve:
1. The elimination of blight and the enhancement of neighborhood vitality and stability;
2. Space for use as urban agriculture, community gardens, or other similar uses consistent with healthy eating by residents, including restoring ground through alternative vegetative cover to build back the soil for future use for food production;
3. Public spaces and places for parks, green spaces, and other public purposes; and
4. Use as wildlife conservation areas. 18
Section 2. Definitions.

a. “City” means the City of XXXX, Kansas.

b. “County” means the County of XXXX, Kansas.

c. “Board” means the board of trustees of the Land Bank established pursuant to this (Ordinance or Resolution).

d. “Bank” means the Land Bank established pursuant to this (Ordinance or Resolution).

e. “Governing Body” means the Governing Body of the (City or County).

f. “Municipality” means any city, county or other political or taxing subdivision which as the power to levy special assessments.

Section 3. Land Bank Board of Trustees; Appointment, Terms and Dissolution

Section 3.1. There is hereby established a Land Bank Board of Trustees (“Board”). The Board shall be composed of XXXX voting members.

MORE ON THE BOARD OF TRUSTEES

Several Land Bank Board of Trustees in Kansas are comprised of City Council members or County Commissioners rather than independently appointed individuals. However, there are endless ways the membership can be determined. Please consider whether your City Council members or County Commissioners have the capacity and expertise to lead the Land Bank. Utilizing independent appointments is a great way to utilize skill sets from community members that have knowledge in property, redevelopment, taxes, etc.

Potential Board of Trustee members include individuals with experience in: city planning; economic development; construction; taxes; and/or finances.

Example: Overland Park, Kansas

“The Board shall be composed of the entire membership of the Governing Body of the City, ex officio, who shall be voting members, and one additional member appointed by the Mayor who shall be a non-voting member and who shall be a City Staff member.”[19]

Example: Hutchinson, Kansas

“The Board shall be composed of two of the voting members from the Hutchinson Housing Commission and three residents with expertise in land development, construction, development finance, real estate, sales or marketing, real estate law, neighborhood growth and development, or expertise related to the responsibilities of Land Bank operation.”[20]

Section 3.2. The Governing Body may appoint the Board. Vacancies on the Board shall be filled by appointment for the unexpired term.
Section 3.3. The term of office for the Board members shall be for a period of XXXX years.

**USING STAGGERING TERMS**

Staggering terms or differing lengths of appointments help prevent total loss of expertise and leadership in any given year and safeguard against political whims of the appointing body.

Section 3.4. The Land Bank staff shall consist of the XXXX staff.

**MORE ON STAFFING THE LAND BANK**

It is important to determine how the Land Bank will be staffed. The staff can be a conduit between the Governing Body, the community, and the Land Bank.

*Example: Junction City, Kansas, and Hutchinson, Kansas*

“Primary staff support to the Board will be provided by the City Manager or his designee. City staff will provide technical and professional support for Land Bank operations; additional support may be contracted as deemed necessary.”21,22

*Example: Greensburg, Kansas*

“The land bank staff shall consist of the administrative staff of the City of Greensburg, Kansas.”23

Section 3.5. The Bank may be dissolved by (Ordinance or Resolution) of the Governing Body. In such case, all property of the Bank shall be transferred to and held by the (City or County) and may be disposed of as otherwise provided by law.

Section 4. Land Bank Board of Trustees; Powers and Duties

Section 4.1. The Land Bank Board of Trustees shall have the following powers and duties:

a. To sue and be sued;

b. To enter into contracts;

c. To appoint and remove staff and provide for the compensation thereof;

d. To acquire, by purchase, gift or devise, and convey any real property, including easements and reversionary interests, and personal property subject to the provisions of this (Ordinance or Resolution) and state law.

e. To rebate all, or any portion thereof, the taxes on any property sold or conveyed by the Bank;

f. To exercise any other power which may be delegated to the Bank by the Governing Body; and

g. To exercise any other incidental power which is necessary to carry out the purposes of the Land Bank, this (Ordinance or Resolution), and state law.
Section 4.2. Any property acquired by the XXXX City, XXXX County, or any other taxing subdivision within the XXXX City or XXXX County may be transferred to the Bank. The Board may accept or refuse to accept any property authorized to be transferred pursuant to this (Ordinance or Resolution) or state law. The transfer of any property pursuant to this subsection shall not be subject to any bidding requirement and shall be exempt from any provision of law requiring a public sale.

Section 4.3. The fee simple title to any real estate which is sold to XXXX County in accordance with the provisions of K.S.A. 79-2803 and 79-2804,24 and amendments thereto, and upon acceptance by the Board may be transferred to the Bank by a good and sufficient deed by the county clerk upon a written order from the Board of County Commissioners.

Section 4.4. The Board shall assume possession and control of any property acquired by it under this (Ordinance or Resolution) or state law, and shall hold and administer such property. In the administration of property, the Board shall:

a. Manage, maintain and protect or temporarily use for a public purpose such property in the manner the Board deems appropriate;

b. Compile and maintain a written inventory of all such property. The inventory shall be available for public inspection and distribution at all times;

c. Study, analyze and evaluate potential, present and future uses for such property which would provide for the effective reutilization of such property;

d. Plan for and use the Board’s best efforts to consummate the sale or other disposition of such property at such times and upon such terms and conditions deemed appropriate;

e. Establish and maintain records and accounts reflecting all transactions, expenditures and revenues relating to the Bank’s activities, including separate itemizations of all transactions, expenditures and revenues concerning each individual parcel of property acquired; and

f. Thirty days prior to the sale of any property owned by the Bank, publish a notice in the official (City or County) newspaper announcing such sale.

Section 5. Land Bank; Operational Requirements

Section 5.1. The Bank shall be subject to the provisions of the cash-basis law, K.S.A. 10-1101 et seq., and amendments thereto.

Section 5.2. The budget of the Bank shall be prepared, adopted and published as provided by law for other political subdivisions of the state. No budget shall be adopted by the Board until it has been submitted to, reviewed and approved by the Governing Body.

Section 5.3. The Board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Board.
Section 5.4. All records and accounts shall be subject to public inspection pursuant to K.S.A. 45-216 et seq., and amendments thereto.

Section 5.5. Any moneys of the Bank which are not immediately required for the purposes of the Bank shall be invested in the manner provided by K.S.A. 12-1675, and amendments thereto.

Section 5.6. The Bank shall make an annual report to the Governing Body on or before January 31 of each year, showing receipts and disbursements from all funds under its control and showing all property transactions occurring in each year. Such report shall include an inventory of all property held by the Bank. A copy of such inventory also shall be published in the official (City or County) newspaper on or before January 31 of each year.

Section 5.7. The Bank shall be subject to the statutory requirements for the deposit of public money as provided by K.S.A. 9-1401 et seq. and the amendments thereto.

Section 5.8. The Board, without competitive bidding, may sell any property acquired by the Board at such times, to such persons, and upon such terms and conditions, and subject to such restrictions and covenants deemed necessary or appropriate to assure the property’s effective reutilization. The sale of any real property by the Board, under the provisions of this (Ordinance or Resolution) or state law, on which there are delinquent special assessments to finance public improvements shall be conditioned upon the approval of the Governing Body.

Section 5.9. The Board, for purposes of land disposition, may consolidate, assemble or subdivide individual parcels of property acquired by the Bank.

Section 5.10. Until sold or otherwise disposed of by the Bank and except for special assessments levied by the (City or County) to finance public improvements, any property acquired by the Bank shall be exempt from the payment of ad valorem taxes levied by the state and any other political or taxing subdivision of the state.

Section 5.11. Except for special assessments levied by a municipality to finance public improvements, when the Board acquires property pursuant to this (Ordinance or Resolution) and state law, the county treasurer shall remove from the tax rolls all taxes, assessments, charges, penalties and interest that are due and payable on the property at the time of acquisition by the Board.

Section 5.12. Property held by the Bank shall remain liable for special assessments levied by a municipality to finance public improvements, but no payment thereof shall be required until such property is sold or otherwise conveyed by the Bank.
Section 5.13. The Governing Body of any municipality which has levied special assessments on property acquired by the Bank may abate part or all of the special assessments, and the Bank and the Governing Body may enter into agreements related thereto. Any special assessments that are abated shall be removed from the tax rolls by the County Treasurer as of the effective date of the abatement.

MORE ON PROPERTY TAXES & SPECIAL ASSESSMENTS

Property taxes are used to fund cities, unified school districts, and community colleges. Most local governments in Kansas have the power to impose property taxes. Many properties being obtained by Land Banks are delinquent properties, including properties with tax liens. Under Kansas law, the county treasurer is required to remove all taxes, assessments, charges, penalties, and interest that are due and payable on the property at the time the Land Bank acquires the property. This means that properties held by a Land Bank are no longer burdened by past due ad valorem (property) taxes. This allows once very undesirable land and properties to become much more attractive to potential buyers and uses.

“Special assessments are a means of financing public improvements such as sidewalks, streets, waterlines, and sewers that add value to land.” Kansas law does not specifically abate the remaining special assessment obligations on the properties held by the Land Bank. Instead, Kansas law grants the Governing Body that levied the special assessments on the property discretion to abate part, all, or none of the special assessments.

Section 5.14. Any moneys derived from the sale of property by the Bank shall be retained by the Bank for the purposes and operations thereof; provided, however, that the Board may use all or any part of the proceeds from the sale to reimburse the (City or County) for delinquent special assessments due on such property.

Section 6. Land Bank; Organization

Section 6.1. The Board shall select annually, from its membership, a chairperson, a vice-chairperson and a treasurer. The treasurer shall be bonded in such amounts as the Governing Body may require.

Section 6.2. The Board may appoint such officers, agents and employees as it may require for the performance of its duties, and shall determine the qualifications and duties and fix the compensation of such officers, agents and employees.

Section 6.3. The Board shall fix the time and place at which its meetings shall be held. Meetings shall be held within XXXX and shall be subject to the provision of K.S.A. 75-4317 et seq., and amendments thereto.

Section 6.4. A majority of the Board shall constitute a quorum for the transaction of business. No action of the Board shall be binding unless taken at a meeting at which at least a quorum is present.

Section 6.5. The members of the Board shall be subject to the provisions of the laws of the state of Kansas which relate to conflicts of interest of county officers and employees, including, but not limited to, K.S.A. 75-4301 et seq., and amendments thereto.
Section 6.6. Subject to the provisions of K.S.A. 75-6101 et seq., and amendments thereto, if any action at law or equity, or other legal proceeding, shall be brought against any member of the Board for any act or omission arising out of the performance of duties as a member of the Board, such member shall be indemnified in whole and held harmless by the Board for any judgment or decree entered against such member and, further, shall be defended at the cost and expense of the Bank in any such proceeding.

Section 7. Effective Date

This (Ordinance or Resolution) shall take effect and be in force from and after its passage and publication once in the official (City or County) newspaper.

Passed by the Governing Body, this ___ day of ____________, 20___,
for the XXXX of XXXX, Kansas.

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Clerk
Endnotes

3 Please note, this is not a legal definition. Kansas law does not provide a substantive legal definition of the term “land bank.”
16 See generally, Hutchinson, Kan., Ordinance No. 2013-34.
19 Overland Park, Supp. No. 2009-3 (9-30-09) at §2.70.030.
20 Hutchinson, Kan., Ordinance No. 2013-34 at §2-1703(A).
21 Junction City, Kan., Code, §110.120(C).
22 Hutchinson, Kan., Ordinance No. 2013-34 at §2-1703(B).
23 Greensburg, Kan., Ordinance No. 1053 at §3.