

THE COMMONWEALTH OF MASSACHUSETTS

CHAPTER 669 Acts and Resolves

In the Year One Thousand Nine Hundred Eighty-Three

An Act RELATIVE TO THE NANTUCKET ISLANDS LAND BANK

(Compiled through Chapter 354 of 2010)

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Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

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

"Commission", shall refer to the Nantucket Islands Land Bank Commission, established by section three.

"Fund", shall refer to the Nantucket Islands Land Bank Fund, established under the provisions of section eight.

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

"Land bank", the Nantucket Islands Land Bank, established by section two.

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

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

"Real property interest", any present or future legal or equitable interest in or to real property, and any beneficial interest therein, including the interest of any beneficiary in a trust which holds any legal or equitable interest in real property, the interest of a partner or member in a partnership or limited liability company, the interest of a stockholder in a corporation, the

interest of a holder of an option to purchase real property, the interest of a buyer or seller under a contract for purchase and sale of real property, and the transferable development rights created under chapter 183A of the General Laws; but shall not include any interest which is limited to any of the following: the dominant estate in any easement or right of way; the right to enforce any restriction; any estate at will or at sufferance; any estate for years having a term of less than 30 years; any reversionary right, condition, or right of entry for condition broken; and the interest of a mortgagee or other secured party in any mortgage or security agreement.

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

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

St.1983, c.669, s.1. Amended by St.2002, c.370, s.1; St.2010, c.354, s.1.

#### Historical Note

St.2002, c.370, s.1 added to the end of the definition of "Real Property Interest" the phrase "or limited liability company, except as provided in section 10A."

St.2010, c.354, s.1 replaced the definition of "Real Property Interest" in its entirety.

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

St.1983, c.669, s.2. Amended by St.1984, c.407, s.1.

#### Historical Note

St.1984, c.407, s.1 added the second sentence.

SECTION 3. The land bank shall be administered by a Commission consisting of five persons elected for staggered five-year terms; and provided that the county commissioners of Nantucket county shall appoint the initial five persons forthwith upon acceptance of this act, to serve until the first annual election of the members to be held at the first annual town election following the acceptance of this act. Members shall be legal residents of Nantucket county and shall serve without compensation. The Commission shall elect a chairman and a secretary/treasurer, from among its members, and may adopt reasonable rules and regulations for the conduct of its affairs and the management of its holdings not inconsistent with the provisions of this act. Decisions of the Commission shall be by majority vote of those present and voting and no business shall be transacted without three members present. The Commission shall keep accurate records of its meetings and actions and shall file an annual report which shall be printed in the annual town

report. Any vacancy on the Commission shall be filled until the next annual town election by majority vote of the remaining Commissioners then in office. At the next annual town election a Commissioner shall be elected for the balance of the unexpired term.

St.1983, c.669, s.3. Amended by St.1991, c.392, s.1.

#### Historical Note

St.1991, c.392, s.1 inserted the last two sentences at the end of Section 3.

SECTION 4. The Commission shall, subject to the provisions of this act, have the power and authority to (-a-) purchase and acquire fee simple interests, and any lesser interests, in any land in Nantucket county, of the types set forth in section five, including any improvements thereon; (-b-) accept gifts of any such interests in land, or of funds to further the purposes of the Land bank; (-c-) take any such interests in land by eminent domain pursuant to chapter seventy-nine of the General Laws, and only by a vote of the Commission in which at least four members vote in favor of such taking and further only after having been authorized to do so in each instance by a two-thirds vote of an annual town meeting of the town of Nantucket, and further provided that a reasonable effort shall first be made to negotiate the acquisition thereof by purchase prior to such taking; (-d-) dispose of all or any portion of its interests in any land or interests thereon held by it, subject to the provisions of Article XCVII of the articles of amendments to the Constitution of Massachusetts to the extent applicable; (-e-) incur debt, pledging the full faith and credit of the town of Nantucket or of Nantucket county, or of both, only after having been authorized to do so in each instance by a two-thirds vote of a town meeting of the town of Nantucket; (-f-) hire such staff and obtain such professional services as are necessary in order to perform its duties; (-g-) administer and manage land and interests in land held by it in a manner which allows public use and enjoyment consistent with the natural and scenic resources thereof; (-h-) lease real property as may be held by the Land bank for purposes consistent with this act; and (-i-) finance and construct recreational facilities, subject to the provisions of section six.

St.1983, c.669, s.4. Amended by St.1987, c.666, s.1.

#### Historical Note

St.1987, c.666, s.1 added (-h-) and (-i-) to section 4.

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

St.1984, c.407, s.2.

SECTION 4B. The land bank is hereby empowered to issue its bonds and notes, including

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

The Commission may enter into any agreements, including without limitation a loan agreement and a trust agreement, necessary to effectuate and to secure any bonds or notes issued by the land bank. Such agreements may pledge or assign, in whole or in part, the revenues and other money held or to be received by the land bank. Such agreements may contain such provisions for protecting and enforcing the rights, security and remedies of the holders of such bonds or notes, including, without limiting the generality of the foregoing, provisions defining defaults and providing for remedies in the event thereof which may include the acceleration of maturities and covenants setting forth the duties of, and limitations on, the land bank in relation to the custody, safeguarding, investment and application of money, the issuance of additional debt obligations, the use of any surplus proceeds of the borrowing, including any investment earnings thereon, and establishment of special funds and reserves.

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

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

It shall be lawful for any bank or trust company within the commonwealth to act as depository

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

St.1984, c.407, s.2.

SECTION 4C. If at any time any principal or interest is due or about to come due on any bonds or notes of the land bank to secure which the full faith and credit of the town of Nantucket or Nantucket county shall have been pledged and funds to pay the same are not available, the Commission shall certify to the town treasurer and selectmen of the town or to the county treasurer and county commissioners of the county, as appropriate, the amount required to meet such obligations and the town treasurer or the county treasurer shall thereupon pay over to the land bank the amount so certified from any funds in the treasury. For the purpose of providing or restoring to the treasury the sums so paid over to the land bank, the town treasurer, with the approval of the selectmen, is authorized to incur debt outside the town's debt limit and issue notes therefor for a period not exceeding two years and to renew or refund the same from time to time until the town shall have received from the land bank sufficient funds to repay such notes and the interest thereon in full. Whenever the town or the county shall have been required to pay over any sums of money to the land bank under this section, the land bank shall be precluded from acquiring any additional property, or issuing any of its bonds or notes for purposes other than repaying the town, until the land bank shall have repaid the town in full for all sums paid to the land bank hereunder, including interest on any notes issued for such purpose, unless the town shall have appropriated sufficient funds for such purpose at a town meeting.

St.1984, c.407, s.2.

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

or any agency or political subdivision of the commonwealth for any purpose for which the deposit of bonds or obligations of the commonwealth is now or may hereafter be authorized by law.

St.1984, c.407, s.2.

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

St.1984, c.407, s.2.

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

St.1984, c.407, s.2.

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

St.1984, c.407, s.2.

SECTION 5. Land to be acquired and held as part of the land bank, or interests in which are to be so acquired and held, shall be situated in Nantucket county, and may consist of any of the following types of land and interests therein; (-a-) ocean, harbor and pond frontage in the form of beaches, dunes and adjoining backlands; (-b-) barrier beaches; (-c-) fresh and salt water marshes, estuaries and adjoining uplands; (-d-) heathland and moors; (-e-) land providing access to ocean, harbor and pond frontage and land for bicycle paths; (-f-) land for future public recreational facilities and use; (-g-) recreation land to protect existing and future wellfields and aquifer recharge areas; and (-h-) land used or to be used for agricultural purposes.

St.1983, c.669, s.1. Amended by St.1987, c.666, s.2.

Historical Note

St.1987, c.666, s.2 added (h).

SECTION 6. The commission shall retain any real property interest relating to land and water areas acquired pursuant to this act predominantly in its natural, scenic or open condition except as provided for by this section. Except upon the approval of the secretary of environmental affairs and where appropriate, subject to the general laws, any special law, or the constitution of Massachusetts, the commission shall not allow (-a-) construction or placing of buildings, roads, signs, billboards, or other advertising utilities or other structures on or above the surface, (-b-) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials, (-c-) removal or destruction of trees, shrubs, or other vegetation, (-d-) excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other mineral substance in such manner as to affect the surface, (-e-) surface use except for purposes permitting the land or water area to remain predominantly in its natural condition, (-f-) activities detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, or (-g-) other acts or uses detrimental to such retention of land or water areas. In determining whether or not to approve a request from the commission to use, improve or dispose of any real property interest acquired by said commission in a manner otherwise prohibited by this section, the secretary shall consider whether such request is in the interest of conservation and any natural, state, regional or local program in furtherance thereof, and also any public, state, regional or local comprehensive land use or development plan affecting the land, and any known proposal by a governmental body for use of the land.

St.1983, c.669, s.6.

SECTION 7. The Commission shall file annually with the secretary of environmental affairs a conservation, public access, and outdoor recreation plan which shall be, as far as possible, consistent with the town master plan and with any regional planning relating to the area. The Commission may, from time to time, amend such plan. The plan shall show all real property interests then currently held by the Commission including a description of the use thereof, and all acquisitions, improvements or dispositions of real property interests held by the Commission at any time during the year preceding each filing, including the reasons for such acquisition, improvement or disposition; the secretary of environmental affairs may require any other information he deems important.

St.1983, c.669,s.7.

SECTION 8. The Commission shall meet its financial obligations by drawing upon a Nantucket islands land bank fund, to be set up as a revolving or sinking account within the treasury of Nantucket county. Deposits into the fund shall include (-a-) funds appropriated to be deposited into the fund by vote of the county commissioners of Nantucket county or of a town meeting of the town of Nantucket; (-b-) voluntary contributions of money and other liquid assets to the fund; (-c-) revenues from fees imposed upon the transfer of real property interests as set forth in section ten occurring after the effective date of this act as set forth in section fifteen, together with payments of interest and penalties under section thirteen; (-d-) proceeds from disposal of real property or interests and; (-e-) funds received from any federal, state, county, region, district or municipal source. The commission is further authorized to accept state and

federal funds to carry out the purposes of this Act as if the commission were in fact a district, city, town, region, county, state, or state agency within the meaning of legislation authorizing any grant consistent with the purposes of this Act. All expenses lawfully incurred by the Commission in carrying out the provisions of this act shall be evidenced by proper vouchers and shall be paid by the county treasurer only upon submission of warrants duly approved by the Commission. The county treasurer of said county shall prudently invest available assets of the fund, and all income thereon shall accrue to the fund. Real property held in the name of the Nantucket Islands land bank or its designee shall be exempt from property taxes as of the date of the acquisition of title by the Nantucket Islands land bank or its designee; and any taxes assessed against such real property interests shall be abated for that portion of any fiscal year during which the real property interests was owned by the Nantucket Islands land bank or its designee.

St.1983, c.669, s.8. Amended by St.1987, c.666, s.3 and St.1991, c.392, s.2.

#### Historical Note

St.1987, c.666, s.3 added the last sentence.

St.1991, c.392, s.2 inserted in the second sentence of Section 8 a new section (e) after the words "real property or interests" and before the "." (period).

St.1991, c.392, s.2 deleted the word "and" before the word (d).

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

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

(b) Schedules of beneficiaries of trusts, list of stockholders of corporations and lists of partnerships filed with the commission for the purpose of determining or fixing the amount of the fee imposed under section ten or for the purpose of determining the existence of any exemption under section twelve shall not be public records for the purposes of section ten of chapter sixty-six of the General Laws.

St.1983, c.669, s.9. Amended by St. 1994, c.309, s.1.

#### Historical Note

St. 1994, c.309, s.1 replaced section 9 with a new section 9 which inserted (a) before the existing text and added paragraph (b).

SECTION 10. There is hereby imposed a fee equal to two per cent of the purchase price upon the transfer of any real property interest in any real property situated in Nantucket county. Said fee shall be the liability of the purchaser of such real property interest, and any agreement

between the purchaser and the seller or any other person with reference to the allocation of the responsibility for bearing said fee shall not affect such liability of the purchaser. The fee shall be paid to the Commission, or its designee, and shall be accompanied by a copy of the deed or other instrument evidencing such transfer, if any, and an affidavit signed under oath or under the pains and penalties of perjury by the purchaser or his legal representative, attesting to the true and complete purchase price and the basis, if any, upon which the transfer is claimed to be exempt in whole or in part from the fee imposed hereby. The Commission, or its designee, shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has been paid or that the transfer is exempt from the fee, stating the basis for the exemption. The register of deeds for Nantucket county, and the assistant recorder for the registry district of Nantucket county, shall not record or register, or receive or accept for recording or registration, any deed, except a mortgage deed, to which has not been affixed such a certificate executed by the commission or its designee. Failure to comply with this requirement shall not affect the validity of any instrument. The commission shall deposit all fees received hereunder with the county treasurer of Nantucket county, as a part of the fund established by section eight. The fee imposed hereunder shall be due simultaneously with the time of transfer of the transfer upon which it is imposed. Notwithstanding the foregoing, whenever there is a conveyance of real property interests and a conveyance of personalty related thereto at or about the same time, the allocations of payments between real estate and personalty agreed to by the purchaser and seller shall not determine the amount of the fee due pursuant to this section; instead, the commission may require payment of the fee referred to in real property interests so conveyed as determined by the commission.

St.1983, c.669, s.10. Amended by St.1987, c.666, s.4.

#### Historical Note

St.1987, c.666, s.4 added last sentence to section 10.

#### SECTION 10A.

St.1987, c.666, s.5. Amended by St.2002, c.370, ss.2 and 3. Repealed by St.2010, c.354, s.2.

#### Historical Note

St.2002, c.370, ss.2 and 3 added the references to "limited liability company" and "limited liability companies".  
St.2010, c.354, s.2 repealed section 10A in its entirety.

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

St.1983, c.669, s.11.

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

proof that any transfer is exempt hereunder. Any otherwise exempt transfer shall not be exempt in the event that such transfer, by itself or as part of a series of transfers, was made for the primary purpose of evading the fee imposed by section 10.

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

(-b-) Transfers which, without additional consideration, confirm, correct, modify or supplement a transfer previously made.

(-c-) Transfers made as gifts without consideration. In any proceeds to determine the amount of any fee due hereunder, it shall be presumed that any transfer for consideration of less than fair market value of the real property interests transferred was made as a gift without consideration to the extent of the difference between the fair market value of the real property interests transferred and the amount of consideration claimed by the purchaser to have been paid or transferred, if the purchaser shall have been at the time of transfer the spouse, the lineal descendant, or the lineal ancestor of the seller, by blood or adoption, and otherwise it shall be presumed that consideration was paid in an amount equal to the fair market value of the real property interests transferred, at the time of transfer.

(-d-) Transfer to the trustees of a trust in exchange for a beneficial interest received by the seller in such trust; distributions by the trustees of a trust to the beneficiaries of such trust.

(-e-) Transfers by operation of law without actual consideration, including but not limited to transfers occurring by virtue of the death or bankruptcy of the owner of a real property interest.

(-f-) Transfers made in partition of land and improvements thereto, under chapter two hundred and forty-one of the General Laws.

(-g-) Transfers to any charitable organization as defined in clause Third of section five of chapter fifty-nine of the General Laws, or any religious organization, provided that the real property interests so transferred will be held by the charitable or religious organization solely for its public charitable or religious purposes.

(-h-) Transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee, and transfers of the property subject to a mortgage to the mortgagee in consideration of the forbearance of the mortgagee from foreclosing said mortgage.

(-i-) Transfers made to a corporation or partnership or limited liability company at the time of its formation, pursuant to which transfer no gain or loss is recognized under the provisions of section three hundred and fifty-one or seven hundred and twenty-one of the Internal Revenue Code of 1986, as amended; provided, however, that such transfer shall be exempt only in the event that (i) with respect to a corporation, the transferor retains an interest in the newly formed corporation which is equivalent to the interest the transferor held prior to the transfer, or (ii) with respect to a partnership or limited liability company, the transferor retains after such formation rights in capital interests and profit interests within such partnership or limited liability company which are equivalent to the interest the transferor held prior to the transfer.

(-j-) Transfers made to a stockholder of a corporation in liquidation or partial liquidation of the corporation, and transfers made to a partner of a partnership or to a member of a limited liability company in dissolution or partial dissolution of the partnership or limited liability company; but the transfer shall be exempt only if (i) with respect to a corporation, the transferee receives property, including real property interests and other property received, which is the same fraction of the total property of the transferor corporation as the fraction of the corporation's stock owned by the transferee prior to the transfer, or (ii) with respect to a partnership or limited liability company, the transferee receives property, including real property interests and other property received, which is the same fraction of the property of the

partnership or limited liability company as the fraction of the capital and profit interests in the transferor formerly owned by the transferee.

(-k-) Transfers consisting of the division of marital assets under the provisions of section thirty-four of chapter two hundred and eight of the General Laws or other provisions of law.

(-l-) Transfers of property consisting in part of real property interests situated in Nantucket county and in part of other property interests, to the extent that the property transferred consists of property other than real property situated in Nantucket county; provided that the purchaser shall furnish the Commission with such information as it shall require or request in support of the claim of exemption and manner of allocation of the consideration for such transfers.

(-m-) An amount determined on or before January 1 of each year by the land bank commission after due analysis of the range of real estate prices and in no event less than \$400,000 of the purchase price of a transfer made to a purchaser who, or whose spouse at the time of transfer, has at no time before the said transfer owned or possessed any real property interest as defined in section 1 either within or without Nantucket county; but the purchaser shall make the real property interest which is the subject of the transfer the purchaser's actual domicile within 1 year of the time of transfer, and shall remain permanently or for an indefinite time and without any certain purpose to return to a former place of abode. In the event of a later transfer within 5 years of the transfer exempted from the fee under this paragraph, other than the transfer of a mortgage to an institutional lender, the fee exempted shall become due, together with the accumulated interest and penalties, and in addition to any fee otherwise due as a result of the later transfer. The purchaser shall certify as to the foregoing, and the Commission shall attach to the deed a certificate which shall recite the fact that there is running with the land a lien equal to the amount of the fee exempted plus accumulated interest and penalties until such time as all conditions of this subsection have been met.

(-n-) Transfers of minority interests in corporations, trusts, partnerships, or limited liability companies which are publicly traded, which trades are not part of a series of transfers which together constitute a transfer of control of a corporation, trust, partnership or limited liability company.

St.1983, c.669, s.12. Amended by St.1984, c.407, s.3; St.1987, c.666, ss.6,7,8; St.1991, c.392, s.3; St.2002, c.370, ss.4,5,6; St.2006, c.130, s.1; St.2010, c.354, ss.3,4,5,6.

## Historical Note

St.1984, c.407, s.3 extended the amount of time allowed before domicile requirement from one year to two years (line 7) and deleted "with the intention to remain permanently or for an indefinite time and without any certain purpose to return to a former place of abode."

St.1987, c.666, s.6 added to (-i-):"; provided, however, that such transfer shall be exempt only in the event that (i) with respect to a corporation, the transferor retains a controlling interest in such corporation after such formation or (ii), with respect to a partnership, the transferor retains after such formation rights to capital interests in excess of fifty per cent of the capital interests within such partnership or retains rights to profit interests within such partnership in excess of fifty per cent of the total profit interests within such partnership."

St.1987, c.666, s.7 added to (-j-): "; provided, however, that such transfer shall be exempt only in the event that (i) with respect to a corporation, the transferee had prior to the transfer a controlling interest in such corporation or (ii) with respect to a partnership, the transferee had prior to the transfer rights to capital interests in excess of fifty per cent of the total capital interests within such partnership or had rights to profit interests within such partnership in excess of fifty per cent of the total profit interests within such partnership."

St.1987, c.666, s.8 amended (-m-) by substituting the word "shall" for "intends to" on line 6.

St.1991, c.392, s.3 inserted after the phrase "section three hundred and fifty-one" and before the word "of" the words "or seven hundred and twenty-one" and in the same sentence substituted the year "1986" in place of the year "1954".

St.2002, c.370, s.4 inserted the phrase "or limited liability company" in (-i-); s.5 restated (-j-) entirely; and s.6 inserted the word "2" in lieu of "one" in (-m-).

St.2006, c.130, s.1 struck from (-m-) the first sentence and replaced it with two sentences.

St.2010, c.354, s.3 added the third sentence to the first paragraph of section 12.

St.2010, c.354, s.4 amended (-i-) by striking out the words "the transferor retains a controlling interest in such corporation after such formation or (ii) with respect to a partnership or limited liability companies, the transferor retains after such formation rights to capital interests in excess of fifty percent of the capital interests within such partnership or limited liability companies or retains rights to profit interests within such partnership or limited liability companies in excess of fifty percent of the total profit interests within such partnership or limited liability companies" and inserting in place thereof "the transferor retains an interest in the newly formed corporation which is equivalent to the interest the transferor held prior to the transfer, or (ii) with respect to a partnership or limited liability company, the transferor retains after such formation rights in capital interests and profit interests within such partnership or limited liability company which are equivalent to the interest the transferor held prior to the transfer."

St.2010, c.354, s.5 replaced the language in paragraph (-j-) in its entirety.

St.2010, c.354, s.6 added paragraph (-n-).

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

(-a-) Interest: The purchaser shall pay interest on the unpaid amount of the fee to be calculated from the time of transfer at a rate equal to fourteen per cent per annum.

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

St.1983, c.669, s.13.

**SECTION 14.** (-a-) The Commission shall notify a purchaser by registered or certified mail of any failure to discharge in full the amount of the fee due under this Act and any penalty or interest assessed. The Commission shall grant a hearing on the matter of the imposition of said fee, or of any penalty or interest assessed, if a petition requesting such hearing is received by the Commission within thirty days after the mailing of said notice. The Commission shall notify the purchaser in writing by registered or certified mail of its determination concerning the deficiency, penalty or interest within fifteen days after said hearing. Any party aggrieved by a determination of the Commission concerning a deficiency, penalty or interest may, after payment of said deficiency, appeal to the district or superior court within three months after the

mailing of notification of the determination of the Commission. Upon the failure to timely petition for a hearing, or appeal to said courts, within the time limits hereby established, the purchaser shall be bound by the terms of the notification, assessment or determination, as the case may be, and shall be barred from contesting the fee, and any interest and penalty, as determined by the Commission. All decisions of said courts shall be appealable. Every notice to be given under this section by the Commission shall be effective if mailed by certified or registered mail to the purchaser at the address stated in a recorded or registered instrument by virtue of which the purchaser holds any interest in land, the transfer of which gives rise to the fee which is the subject of such notice; and if no such address is stated or if such transfer is not evidenced by an instrument recorded or registered in the public records in Nantucket county, such notice shall be effective when so mailed to the purchaser in care of any person appearing of record to have a fee interest in such land, at the address of such person as set forth in an instrument recorded or registered in Nantucket county.

(-b-) All fees, penalties and interest required to be paid pursuant to this chapter shall constitute a personal debt of the purchaser and may be recovered in an action of contract or in any other appropriate action, suit or proceeding brought by the Commission; said action, suit or proceeding shall be subject to the provisions of chapter two hundred and sixty of the General Laws.

(-c-) If any purchaser liable to pay the fee established by this act neglects or refuses to pay the same, the amount, including any interest and penalty thereon, shall be a lien in favor of the Commission upon all property and rights to property, whether real or personal, belonging to such purchaser. Said lien shall arise at the time of transfer and shall continue until the liability for such amount is satisfied. Said lien shall in any event terminate not later than six years following the time of transfer. Said lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor unless notice thereof has been filed by the Commission (-a-) with respect to real property or fixtures, in the registry of deeds for Nantucket county, or (-b-) with respect to personal property, in the office in which a security or financing statement or notice with respect to the property would be filed in order to perfect a nonpossessory security interest belonging to the person named in the relevant notice, subject to the same limitations as set forth in section fifty of chapter sixty-two C of the General Laws.

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

The Commission may issue a waiver or release of any lien imposed by this section. Such waiver or release shall be conclusive evidence that the lien upon the property covered by the waiver or release is extinguished.

St.1983, c.669, s.14. Amended by St.1984, c.407, s.5.

## Historical Note

St.1984, c.407, s.5 amended subsection (c) of section 14 by inserting after the word "sixty-two" the letter "C".

SECTION 14A. Upon termination or dissolution of the land bank, the title to all funds and other properties owned by it which remain after payment or the making of provision for payment of all bonds, notes and other obligations of the land bank shall vest in the town of Nantucket.

St.1984, c.407, s.4.

SECTION 14B. This act, being necessary for the welfare of the town and county of Nantucket and their inhabitants, shall be liberally construed to effect the purposes hereof.

St.1984, c.407, s.4.

SECTION 14C. The provisions of this act are severable, and if any provision hereof, including without limitation any exemption from the fee imposed hereby, shall be held invalid in any circumstances such invalidity shall not affect any other provisions or circumstances. This act shall be construed in all respects so as to meet all constitutional requirements. In carrying out the purposes and provisions of this act, all steps shall be taken which are necessary to meet constitutional requirements whether or not such steps are required by statute.

St.1984, c.407, s.4. Amended by St.1985, c.202, s.1.

## Historical Note

St.1985, c.202, s.1 amended section 14C by inserting the words "including without limitation any exemption from the fee imposed hereby," in the first sentence.

SECTION 14D. If the commission has determined that a fee is due by asserting the application of the evasion of fee doctrine described in section 12, then the transferee shall have the burden of demonstrating by clear and convincing evidence as determined by the commission that the transfer, or series of transfers, possessed both: (i) a valid, good faith business purpose other than avoidance of the fee set forth in section 10 and (ii) economic substance apart from the asserted fee avoidance benefit. In all such cases, the transferee shall also have the burden of demonstrating by clear and convincing evidence as determined by the commission that the asserted non-fee-avoidance business purpose is commensurate with the amount of the fee pursuant to section 10 to be thereby avoided.

St.2010, c.354, s.7.

SECTION 15. This act shall become effective upon its acceptance by vote of a town meeting of the town of Nantucket on February first, nineteen hundred and eighty-four.

St.1983, c.669, s.15.

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Acts compiled above:

St.1983, c.669 approved December 20, 1983, effective February 1, 1984.

St.1984, c.407 approved December 27, 1984, emergency letter January 3, 1984 9:42 a.m.

St.1985, c.202 approved July 29, 1985 1:15 p.m.

St.1987, c.666 approved January 6, 1988, effective February 5, 1988.

St.1991, c.392 approved December 23, 1991, effective December 23, 1991.

St.1994, c.309 approved December 29, 1994, effective December 29, 1994.

St.2002, c.370 approved November 16, 2002, effective December 16, 2002.

St.2006, c.130 approved June 28, 2006, effective July 28, 2006.

St.2010, c.354 approved October 7, 2010, effective January 6, 2011.

Additional Special Acts:

St.1994, c.270 approved December 21, 1994, effective December 21, 1994 (regarding golf course contracts).