

NANTUCKET LAND BANK COMMISSION

**Rules and Regulations
Governing the Conduct of Nantucket Land Bank Commission Proceedings
and the Application of the Transfer Fee to the Transfer of Any
Real Property Interest within the County of Nantucket
Pursuant to Nantucket Islands Land Bank Act
(Massachusetts Acts of 1983, Chapter 669, as Amended)**

AMENDED EFFECTIVE JANUARY 18, 2019

**(AMENDING RULES AND REGULATIONS EFFECTIVE JULY 22, 2011,
AS AMENDED JULY 13, 2012 and JUNE 2, 2017,
REPLACING RULES AND REGULATIONS EFFECTIVE JULY 1, 2002,
AS AMENDED THROUGH SEPTEMBER 1, 2006,
WHICH REPLACED RULES AND REGULATIONS
EFFECTIVE FEBRUARY 12, 1990,
AS AMENDED THROUGH MAY 14, 1991)**

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SECTION 1-GENERAL

1.01 PURPOSE

The Nantucket Islands Land Bank Commission, pursuant to Section Three of Chapter 669 of the Massachusetts Acts of 1983 (Nantucket Islands Land Bank Act) as amended, hereby adopts and establishes the following Rules and Regulations for the conduct of its proceedings and the application of the transfer Fee to transfers of any Real Property Interest within the County of Nantucket.

1.02 EFFECTIVE DATE

The 2011 Rules and Regulations Amended June 2, 2017, of the Nantucket Islands Land Bank Commission shall take effect on June 2, 2017, and apply to transfers occurring on or after that date. Transfers of Real Property Interests prior to June 2, 2017, but after July 13, 2012, shall be governed by the 2011 Rules and Regulations of the Nantucket Islands Land Bank Commission as Amended July 13, 2012, if applicable; transfers of Real Property Interests prior to July 13, 2012 but after July 22, 2011, shall be governed by the 2011 Rules and Regulations of the Nantucket Islands Land Bank Commission, if applicable; transfers of Real Property Interests prior to July 22, 2011, but after July 1, 2002, shall be governed by the 2002 Amended Rules and Regulations of the Nantucket Islands Land Bank Commission, if applicable, and transfers of Real Property Interests prior to July 1, 2002, shall be governed by the Rules and Regulations that took effect on February 12, 1990, if applicable. As of June 2, 2017, all prior regulations are hereby superseded by these 2011 Rules and Regulations amended July 13, 2012, and June 2, 2017.

1.03 DEFINITIONS

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

"Act", shall refer to Nantucket Islands Land Bank Act, Chapter 669 of the Massachusetts Acts of 1983, as amended from time to time.

"Affordable Housing Restriction" shall refer to " a recorded instrument held by a qualified holder which encumbers or restricts a real property interest so that the real property interest is perpetually, or for a term of at least 30 years, limited to use as a residence occupied by a low or moderate income household that earns less than a specified income level, the upper limit of which may not exceed 175 per cent of the Nantucket median income; provided, however, that a "qualified holder" shall be a governmental body or charitable corporation or trust that qualifies under the terms of chapter 184 of the General Laws to hold an affordable housing restriction as defined in section 31 of said chapter 184; and provided further, that without limiting the generality of the foregoing, an affordable housing restriction shall include any instrument that conforms to the requirements of: (i) a Nantucket housing needs covenant as described in chapter 301 of the acts of 2002 and defined from time to time in the town of Nantucket code; or (ii) an affordable housing restriction complying with the definition and other requirements of said chapter 184", as defined in Section One of the Act.

"Commission", shall refer to "the Nantucket Islands Land Bank Commission, established by section three of the Act", as defined in Section One of the Act.

"Control", "Controlling", and "Controlling Interest", shall have the meaning set forth in Securities Exchange Commission Rule 405, Promulgated under the Securities Exchange Act of 1934, as amended, stating the definition of these words as follows: "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise."

"Corporation", shall refer to any entity organized under the law of any state or country which is taxable as a corporation under the Internal Revenue Code, or which would be taxable thereunder as a corporation if it had income subject to taxation under the Internal Revenue Code. Such entities shall include without limitation corporations, limited liability companies which are taxed as corporations, and so-called "Massachusetts business trusts".

"Deferred Payment Value" shall refer to the portion of Purchase Price consisting of any form of deferred payments or deferred or contingent Real Property Interest. Deferred payments of valuable consideration of any kind or nature or any deferred or contingent Real Property Interest shall be valued at present value, discounting such payments to the Time of Transfer using the applicable interest rate(s) and mortality tables published pursuant to Internal Revenue Code Section 7520 (or any successor thereto) most recently published prior to the Time of Transfer.

"Entity", shall refer to any non-natural person which legally exists, including without limitation a Corporation, a Partnership, a Trust, a limited liability company, or a limited liability partnership.

"Fee", shall refer to the two percent real estate transfer fee established under Section 10 of the Act or the total of such Fees as are due pursuant to Subsection 8.03 of these Rules and Regulations.

"Form 1", shall refer to Nantucket Islands Land Bank Commission Form 1 Purchaser's Affidavit Attesting to the True And Complete Purchase Price and stating any Exemption claimed from the Fee. (Attached hereto as Exhibit 1)

"Form 2", shall refer to Nantucket Islands Land Bank Commission Form 2 Seller and/or Purchaser's Affidavit as to entity ownership and Seller's Affidavit as to prior transactions. (Attached hereto as Exhibit 2)

"Form A", shall refer to Nantucket Islands Land Bank Commission Form A Purchaser's Affidavit supporting a claim of Exemption A. (Attached hereto as Exhibit A)

"Form B", shall refer to Nantucket Islands Land Bank Commission Form B Purchaser's Affidavit supporting a claim of Exemption B. (Attached hereto as Exhibit B)

"Form C", shall refer to Nantucket Islands Land Bank Commission Form C Purchaser's Affidavit supporting a claim of Exemption C. (Attached hereto as Exhibit C)

"Form D", shall refer to Nantucket Islands Land Bank Commission Form D Purchaser's Affidavit supporting a claim of Exemption D. (Attached hereto as Exhibit D)

"Form E", shall refer to Nantucket Islands Land Bank Commission Form E Purchaser's Affidavit supporting a claim of Exemption E. (Attached hereto as Exhibit E)

"Form F", shall refer to Nantucket Islands Land Bank Commission Form F Purchaser's Affidavit supporting a claim of Exemption F. (Attached hereto as Exhibit F)

"Form G", shall refer to Nantucket Islands Land Bank Commission Form G Purchaser's Affidavit supporting a claim of Exemption G. (Attached hereto as Exhibit G)

"Form H", shall refer to Nantucket Islands Land Bank Commission Form H Purchaser's Affidavit supporting a claim of Exemption H. (Attached hereto as Exhibit H)

"Form I-1", shall refer to Nantucket Islands Land Bank Commission Form I-1 Purchaser's Affidavit supporting a claim of Exemption I applicable to a new entity. (Attached hereto as Exhibit I-1)

"Form I-2", shall refer to Nantucket Islands Land Bank Commission Form I-2 Purchaser's Affidavit supporting a claim of Exemption I applicable to a previously existing entity. (Attached hereto as Exhibit I-2)

"Form J", shall refer to Nantucket Islands Land Bank Commission Form J Purchaser's Affidavit supporting a claim of Exemption J. (Attached hereto as Exhibit J)

"Form K", shall refer to Nantucket Islands Land Bank Commission Form K Purchaser's Affidavit supporting a claim of Exemption K. (Attached hereto as Exhibit K)

"Form L", shall refer to Nantucket Islands Land Bank Commission Form L Purchaser's Affidavit supporting a claim of Exemption L. (Attached hereto as Exhibit L)

"Form M", shall refer to Nantucket Islands Land Bank Commission Form M Purchaser's Affidavit supporting a claim of Exemption M. (Attached hereto as Exhibit M)

"Form N", shall refer to Nantucket Islands Land Bank Commission Form N Purchaser's Affidavit supporting a claim of Exemption N. (Attached hereto as Exhibit N)

"Form O", shall refer to Nantucket Islands Land Bank Commission Form O Purchaser's Affidavit supporting a claim of Exemption O. (Attached hereto as Exhibit O.)

"Forms", shall refer to Forms 1, 2, and A through O, as applicable.

"Fund" (as defined in Section 1 of the Act) "shall refer to Nantucket Islands Land Bank Fund, established under the provisions of section eight of the Act".

"Institutional Lender" (as defined in Section 1 of the Act) shall refer to "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 of the Act, and any national bank, federal savings and loan association, federal savings bank, bank holding company, or state or federally chartered credit union".

"Internal Revenue Code", shall refer to the United States Internal Revenue Code of 1986, as amended. Any reference in any Section of the Act or these Rules and Regulations to any provision of the Internal Revenue Code of 1954, as amended, shall refer to the corresponding provision of the 1986 Code.

"Land Bank" (as defined in Section 1 of the Act) shall refer to "the Nantucket Islands Land Bank, established by section two of the Act".

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

"M Exemption Amount" (as defined in Section 12(m) of the Act) shall refer to an amount determined on or before January 1 of each year by resolution of the Land Bank Commission after due analysis of the range of real estate prices and in no event less than \$400,000.

"Partnership", shall refer to any entity organized under the law of any state or country which is taxable as a partnership under the Internal Revenue Code, or which would be taxable thereunder as a partnership if it had income subject to taxation under the Internal Revenue Code. Such entities shall include without limitation general partnerships, limited liability companies which are taxed as partnerships, limited partnerships, and limited liability partnerships taxed as partnerships.

"Petition", shall refer to a written request signed by not less than twenty citizens within the County of Nantucket.

"Purchaser" (as defined in Section 1 of the Act) shall refer to "the transferee, grantee or recipient of any Real Property Interest".

"Public Entity", shall refer to any Corporation, Trust, Partnership, Limited Liability Partnership or Limited Liability Company the ownership interests of which are publicly traded on a public exchange, such as the New York Stock Exchange, American Stock Exchange or NASDAQ.

"Purchase Price" (as defined in Section 1 of the Act) shall refer to "all consideration paid or transferred by or on behalf of a Purchaser to a Seller or his nominee, or for his benefit, for the transfer of any Real Property Interest, and shall include, but not be limited to, all cash or its equivalent so paid or transferred; all cash or other property paid or transferred 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 then 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" (as defined in Section 1 of the Act) shall refer to 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" (as defined in Section 1 of the Act) shall refer to "the transferor, grantor or immediate former owner of any Real Property Interests".

"Time of Transfer" (as defined in Section 1 of the Act) "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".

"Transfer Documents", shall refer to the original deed or other transfer instrument including but not limited to; bills of sale, stock powers, certificates of limited partners, leases, and schedules of beneficiaries, one copy thereof, together with Form 1 and all other Forms appropriate for the particular transfer, completed and fully executed.

1.04 APPLICABILITY

The Rules and Regulations of the Commission shall apply to the transfer of any Real Property Interest in any real property situated in the County of Nantucket.

1.05 AMENDMENTS

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

1.06 REGISTRY OF DEEDS

Any reference in these Rules and Regulations to "recording" or "Registry of Deeds", or the like, shall be interpreted to include references to either or both (as appropriate) of the unregistered land title recording system and the analog of such words or phrases in the registered land title system.

SECTION 2-SUBMISSION AND ACCEPTANCE OF REAL ESTATE TRANSFERS

2.01 FORMS AND DOCUMENTS REQUIRED

- (1) The Commission hereby adopts the Forms attached hereto as the documents to be submitted to the Commission in connection with the transfer of any Real Property Interest in any real property situated in the County of Nantucket. These Forms are to be used in accordance with this Subsection 2.01.
- (2) At the Time of Transfer of any Real Property Interest, the Purchaser shall submit to the Land Bank the Transfer Documents, which shall include Form 1, Form 2 if either Seller or Purchaser is an entity, and the Form pertaining to any exemption or exemptions claimed in connection with the Transfer.
- (3) No filing of Transfer Documents will be complete unless all the Forms applicable to the Transfer are filed, signed by the proper parties, and accompanied by all supplemental information and documents required by the Forms. If a filing is not complete, the Land Bank may refuse to process the Transfer Documents.
- (4) Form 1 shall be executed by the Purchaser. When applicable, Form 2 shall be executed by the Purchaser and/or the Seller. Form 2 and data submitted in response to Form 2, to the extent feasible, shall be retained separate from public records maintained by the Commission, and shall not be public records to the extent authorized by Section 9(b) of the Act or other applicable law.
- (5) Forms executed by a party acting under a power of attorney, other than an attorney at law, shall be accompanied by a power of attorney duly executed by the party. Form M and Form O (Page 1) must be signed by the Purchaser(s) only, and may not be signed under power of attorney or by an attorney at law.

2.02 SUBMISSION COMPLETENESS

- (1) Pursuant to the fourth sentence of Section 10 of the Act, the Commission designates and authorizes its Director, or the Director's designee, to review submissions for completeness on a preliminary basis, make preliminary determinations of compliance with the Act and the requirements set forth herein, and on a preliminary basis to "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", as set forth in said Section 10 of the Act. If an exemption is claimed, the Director, or the Director's designee, shall affix the Commission's Certificate only if the transfer clearly qualifies for the exemption. Otherwise, no Certificate shall be issued until the Fee is paid or the Commission reviews the transaction and finds that the claimed exemption applies.
- (2) After a Certificate is issued by the Director, or the Director's designee, in accordance with the previous paragraph, the Commission shall review the action taken at a meeting of the Commission, held within the time period set forth in Section 3.03 of these Rules and Regulations, and make a final determination of compliance. Should the Commission disagree with the issuance of a Certificate stating that the transaction is exempt, the Commission may use the lien procedure set forth in Section 5 of these Rules and Regulations. Also, a Certificate may be revoked by the Commission if it later determines after proceedings pursuant to Section 7 hereof that the transfer alone or as part of a series of transfers

constitutes a transfer subject to the Fee. Such revocation and collection of any deficiency determined may be enforced pursuant to any of the procedures stated in Section 9 hereof.

- (3) No transfer of any Real Property Interest shall be processed by the Land Bank unless accompanied by the required Forms and documents set forth herein.
- (4) Each Form required to be submitted shall be accurately completed and executed by the Purchaser or Seller, as applicable, or (if permitted) an authorized representative, prior to acceptance by the Land Bank.
- (5) If no exemption is claimed, or if a partial exemption is claimed leaving part of the Purchase Price subject to the Fee, a check made payable to Nantucket Islands Land Bank is required at the Time of Transfer, in the amount of two percent of the Purchase Price of either all or the portion of the Purchase Price not exempt.
- (6) The Purchaser shall be responsible for submission completeness.
- (7) Pursuant to Section 10 of the Act, the Commission hereby adopts the form of the Certificate attached hereto as Exhibit 3.

2.03 LAND BANK TRANSFER FEE

- (1) As set forth in Section 10 of the Act, 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" shall be paid by the Purchaser at the Time of Transfer. The Purchase Price must include all sums paid or things given in exchange for any Real Property Interest, whether or not paid or given to the named Seller.
- (2) The Fee shall be computed utilizing the fair market value of the Real Property Interest transferred.
 - (a) In the absence of a specified Purchase Price, or in the absence of substantial proof of value submitted by the Purchaser to the Commission, or in the event of a stated Purchase Price which the Commission believes to be inconsistent with fair market value, the Fee shall be computed on the fair market value. The Commission may determine fair market value by utilizing the Town of Nantucket Assessor's value in effect at the Time of Transfer or an appraisal by an independent appraiser of the Commission's choice. (The Commission may elect to retain the services of an independent appraiser of its choice or to adopt the opinion of an appraisal done in connection with the Transfer which the Commission deems to be independent, such as an appraisal prepared for the Purchaser's purchase money lender.)
 - (b) As to any portion of the Purchase Price comprised of deferred payments or other forms of deferred or contingent consideration, the Fee shall be determined based on the Deferred Payment Value.
 - (c) When a Fee is due as a result of a series of related transactions, the Fee shall be determined based upon the fair market value of the cumulative Real Property Interests transferred all valued at the Time of Transfer of the last Real Property Interest within the series which resulted in the Fee being due.

(3) Where property is transferred subject to a mortgage or other indebtedness, the Fee shall be computed utilizing the sum of (a) the cash or other consideration given, (b) the value of any debt assumed, and (c) any outstanding obligation to which the Real Property Interest transferred remains subject after the transfer.

(4) The Fee shall be the personal liability of the Purchaser. Any agreement between the Purchaser and the Seller or any other party with reference to the allocation of the responsibility for bearing said Fee shall not affect such liability of the Purchaser.

(5) In the event of multiple Purchasers, payment of the Fee shall be the joint and several obligation of the Purchasers.

(6) The Fee shall be paid by check, payable to the Nantucket Islands Land Bank, at its administrative headquarters during its regular business hours. If a check is not paid or is returned unsatisfied, a lien shall be placed against property of the Purchaser, pursuant to Section 5 of these Rules and Regulations, for the transfer Fee, penalty and interest, in accordance with the Act and these Rules and Regulations.

(7) The purchase of an option or contract right with respect to Real Property Interests is subject to the Land Bank Fee. The Fee shall be calculated based on the Purchase Price paid by a Purchaser for the option or contract right. If no Purchase Price is paid, the Fee shall be based on the fair market value of the Real Property Interest which is subject to the option or contract right. If the Purchase Price paid for the option or contract right is credited toward the Purchase Price ultimately paid for the Real Property Interest, the Fee paid at the time the option or contract right was transferred shall be credited toward the Fee due at the Time of Transfer of the Real Property Interest subject to the option or contract right.

(8) Consistent with the definition of "Real Property Interest", a Fee shall be due at the Time of Transfer of any beneficial or ownership interest in any Entity which owns a Real Property Interest in the County of Nantucket. The Fee shall be determined based on the fair market value of the ownership interest at the Time of Transfer.

(9) A tax free exchange of any Real Property Interest under the Internal Revenue Code, as amended, or any other land swap, is subject of the Fee, unless otherwise exempted pursuant to Section 12 of the Act. Each property shall be subject to the Fee as if sold separately, and the Purchase Price shall be computed on the basis of the Real Property Interest or other property to be exchanged pursuant to the definition set forth in Subsection 1.03 of these Rules and Regulations.

(10) There shall be a Fee paid on any lease having a term of thirty (30) years or more, including certain renewals, as set forth in Subsection 2.05 of these Rules and Regulations.

2.04 TRANSFERS OF INTERESTS IN ENTITIES

(1) Pursuant to the definition of "Real Property Interest" in the Act, an interest in an Entity which holds any Real Property Interest is also a Real Property Interest. Therefore, all non-deed transfers of interests in any Entity holding any Real Property Interest in real property situated in the County of Nantucket are subject to the Fee, unless otherwise exempted pursuant to Section 12 of the Act.

(2) A series of transfers of interests in an Entity or multiple Entities may be subject to the Fee if the series of transfers occurring as a single transaction would have produced a non-exempt result, even though the individual transfers within the series were each exempt. In the event that such a series is determined to have occurred, the Fee will be due at the Time of Transfer which produces the taxable event. The Fee shall be determined based on the current fair market value of the cumulative interest conveyed valued on the date of the final transfer.

(3) No Land Bank Certificate shall be issued for a deed granted by an Entity or to an Entity unless the Purchaser both supplies the required Forms and Transfer Documents, pursuant to Subsection 2.01 of these Rules and Regulations and also complies with Section 8 of these Rules and Regulations.

2.05 LEASES

(1) Pursuant to the Act, the Purchase Price of a lease of thirty (30) years or more is subject to the Fee.

(2) Any lease may be presented to the Land Bank for issuance of a Certificate. A Land Bank Certificate showing an exemption by non-applicability of the Act shall be affixed to every lease or notice of lease presented of less than thirty years duration. Copies of all leases and notices of lease filed at the Nantucket Registry of Deeds without the issuance by the Land Bank of a Certificate indicating that the appropriate Fee has been paid on the Purchase Price, or that the lease is exempt from the Fee, stating the basis for the exemption, shall be forwarded by the Registry of Deeds to the Land Bank for review. Failure to comply with this requirement shall not create any liability upon the Register of Deeds and/or the Assistant Recorder of the Land Court.

(3) The Fee shall be computed on the Purchase Price calculated at Deferred Payment Value.

(4) In determining "present value", where there is an automatic renewal of the lease, payments due during the renewal period shall be included in the computation of "present value". Where the renewal of the lease requires the execution of additional renewal papers by the parties, the computation of "present value" shall not include payments under any such renewal period.

2.06 REMAINDERS AND LIFE ESTATES

(1) Remainders and life estates are Real Property Interests subject to the Fee. The Fee shall be calculated on the basis of two percent of the Purchase Price.

(2) In the absence of a stated Purchase Price, remainders and life estates will be valued at Deferred Payment Value.

SECTION 3-REQUIREMENT OF SUPPLEMENTAL DOCUMENTATION

3.01 REQUESTS FOR ADDITIONAL INFORMATION

(1) The Commission may request supplemental documentation or additional information at any time in order to make a determination of compliance with the Act. Such requests may pertain to any direct or indirect party to a transaction and may be for, but shall not be limited to, underlying agreements, stock powers, certificates of transfer agents, certificates of limited partnerships, lists of owners, members,

partners or beneficiaries, or any other documents which provide evidence of the facts set forth in any Forms submitted. Such requests may be for information regarding transactions as to which no Forms were submitted, but which are documented or implied by the records at Nantucket Registry of Deeds or by other credible sources.

(2) Unless otherwise specified in the notice, such documents and/or information requested shall be provided by the Purchaser within 15 days of the mailing date of the Commission request, which date of mailing shall be clearly displayed on the request. The data regarding composition of Entities submitted in response to the request, to the extent feasible, shall be retained separate from public records maintained by the Commission, and shall not be public records to the extent authorized by Section 9(b) of the Act or other applicable law.

(3) Such requests shall be mailed to the Purchaser, with a copy to any representative (specifically including attorneys at law) executing the Forms, pursuant to Subsection 2.01 of these Rules and Regulations, provided however that such mailing address is provided on the Form 1. Delivery of notice to Purchaser's representative shall constitute notice to Purchaser.

3.02 FAILURE TO COMPLY

(1) Failure to comply with a Commission request for supplemental documentation and/or information may result in a determination by the Commission of non-compliance with the Act.

(2) Non-compliance with the Act may result in a determination of Fee due and the placing of a lien against the real or personal property of the Purchaser pursuant to Section 5 of these Rules and Regulations.

(3) All submissions to the Commission shall be under the pains and penalties of perjury; it shall be unlawful to supply false information to the Commission. The submission of false information shall be referred to the District Attorney for the Cape and Islands District.

3.03 DETERMINATION OF COMPLIANCE

The Commission shall regularly review transfer submissions and make determinations regarding compliance with the Act within 90 days of the date such submissions are filed with the Commission, except where the Commission during such 90 day period has mailed a written request for additional information, in which case the 90 day period to act shall commence on the date the requested information is fully filed with the Commission. Notwithstanding the foregoing, the 90 day period to act shall not apply to instances of fraud or willful evasion of the Fee.

SECTION 4-APPLICABILITY OF EXEMPTIONS FROM THE LAND BANK FEE

4.01 BURDEN OF PROOF

(1) The Purchaser shall have the burden of proof that any transfer is exempt under the Act. No exemption shall be deemed to apply without proof of compliance with the claimed exemption submitted by the Purchaser, and in a form satisfactory to the Commission.

(2) As stated in Section 14D of the Act, if the Commission has determined that a fee is due by asserting the application of the evasion of fee doctrine described in the preamble of Section 12 of the Act, then the Purchaser 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 and (ii) economic substance apart from the asserted Fee avoidance benefit. In all such cases, the Purchase 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 to be thereby avoided.

4.02 COMMISSION INTERPRETATION OF EXEMPTION APPLICABILITY

The Commission shall have the responsibility to interpret and apply any exemption from the Fee.

4.03 LAND BANK FEE EXEMPTIONS

Pursuant to Section 12 of the Act, exemptions from the Land Bank Fee and the Commission's interpretation of applicability are as set forth in Subsections 4.04 through 4.18 of these Rules and Regulations.

4.04 THE "A" EXEMPTION

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

(2) Exemption "A" shall apply, but not be limited, to transfers made to the Nantucket Islands Land Bank, the Town of Nantucket, the Nantucket Memorial Airport Commission, Wannacomet Water Company, Siasconset Water Company, and the County of Nantucket.

4.05 THE "B" EXEMPTION

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

(2) Evidence of the transfer previously made shall be required to substantiate applicability of the "B" exemption.

(3) This exemption shall not apply if the previous transfer is found not to be in compliance with the Act.

4.06 THE "C" EXEMPTION

(1) As stated in Section 12 (c) of the Act, the "C" exemption applies to "Transfers made as gifts without consideration. In any proceeds (sic, should be "proceedings") to determine the amount of any fee due hereunder, it shall be presumed that any transfer for consideration of less than fair market value of the Real Property Interests transferred was made by gift without consideration to the extent of the difference between the fair market value of the Real Property Interests transferred and the amount of the 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."

(2) A claim of exemption "C" shall require filing with the Land Bank documentation indicating the relationship between the Purchaser and the Seller.

(3) Any claim of the "C" exemption may be forwarded to the Internal Revenue Service.

(4) The Purchaser may submit evidence at the time the exemption is claimed to rebut the presumption that the consideration equaled fair market value, however the presumption shall not be rebutted except by a demonstration of clear and convincing evidence. As used in the "C" exemption, "consideration" is the same as "Purchase Price" as defined in Section 1 of the Act and Section 1.03 of these Regulations.

(5) In the event that a gift is claimed and the recipient is a nominee, full disclosure is required regarding the principal for which the nominee holds title, including a schedule of beneficiaries, or if the beneficiary is an Entity, a schedule of the owners of the Entity, each schedule stating the interest received by the applicable parties. In the event that a gift is claimed and the recipient is an Entity, a schedule the owners of the Entity and the interests received by the parties thereto must be provided.

(6) The exemption shall be automatically denied if any document required under this Section is not provided.

4.07 THE "D" EXEMPTION

(1) As stated in Section 12 (d) of the Act, the "D" exemption applies to a "Transfer to the trustees of a trust in exchange for a beneficial interest received by the Seller in such trust; distributions by the trustees of a trust to the beneficiaries of such trust."

(2) Exemption "D" applies only when the following is true: (i) with respect to a transfer into a trust, the beneficial interest received by each transferor is in proportion to the interest transferred; or (ii) with respect to a transfer out of a trust, the distribution to each beneficiary is in proportion to the beneficial interest previously held.

(3) A claim of exemption "D" shall require filing with the Land Bank a complete and accurate schedule of beneficiaries signed under the pains and penalties of perjury. Such schedule may be provided on Form D, or as an attachment thereto.

(4) In the event that the transfer is both a gift and a transfer into or out of a trust, the Purchaser must also designate the "C" exemption on Form 1 and provide a Form C and a schedule of beneficiaries of the trust and the relationships among said beneficiaries.

(5) The "D" exemption shall not apply to transfers for a Purchase Price.

(6) The "D" exemption, for transfers into a trust shall apply only to that portion of the transaction upon which the Grantor retains an interest through being a beneficiary of the trust.

(7) The "D" exemption shall also apply to "straw" deeds. Straw deeds shall include and be limited to a transfer to a third party simply for the purpose of reconveying to the transferor. The grantee shall have no powers or duties except to execute and deliver a deed for such reconveyance without altering the Real Property Interest owned by the original transferor.

4.08 THE "E" EXEMPTION

(1) As stated in Section 12 (e) of the Act, the "E" exemption applies to "Transfers by Operation of Law without actual consideration, including but not limited to transfers occurring by virtue of the death or bankruptcy of the owner of a Real Property Interest."

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

(3) Evidence documenting the event constituting the Operation of Law is required at the time of filing.

4.09 THE "F" EXEMPTION

(1) As stated in Section 12 (f) of the Act, the "F" exemption applies to "Transfers made in partition of land and improvements thereto, under chapter two hundred and forty-one of the General Laws."

(2) A petition to partition shall not by itself be deemed a partition of land; instead, exemption "F" shall apply to a decree by a court of competent jurisdiction requiring a physical division of real property into divided parcels of real property, the size and configuration of which correspond to the pre-partition ownership interests in the undivided parcel.

(3) No sale of a Real Property Interest shall be deemed a partition of land, except as provided in (4) which follows.

(4) In the event of a court order to convey all or any part of the real property that is the subject of a petition to partition to an interested party, the "F" exemption shall apply only to that portion of any Real Property Interest previously held by the Purchaser. Any Purchase Price in excess of the fair market value of the previously held Real Property Interest shall be subject to the Fee.

(5) A claim of the "F" exemption shall require the Purchaser to file with the Land Bank the court decree and all court documents pertaining to the petition to partition under chapter two hundred forty-one of the General Laws or any other applicable statute.

(6) Exemption "F" shall also be applicable to a voluntary partition of real property owned by multiple owners, but only if the Real Property Interest transferred to each party, as a result of the voluntary partition, is proportionally equal in value to the value of the Real Property Interest held by each party prior to the voluntary partition. (In the event that the Real Property Interests held by each party after the voluntary partition are different from the interests held prior thereto, the "F" exemption shall apply only to that portion of any Real Property Interest previously held by the Purchaser. A Fee shall be paid on the Purchase Price for any increased Real Property Interest received by the Purchaser as a result of the voluntary partition.)

4.10 THE "G" EXEMPTION

(1) As stated in Section 12 (g) of the Act, the "G" exemption applies to "Transfers to any charitable organization as defined in clause Third of section five of chapter 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."

(2) A claim of the "G" exemption shall require filing with the Land Bank documentation evidencing the charitable status of the organization, which may include without limitation a copy of an Internal Revenue Service letter determining that the organization has tax exempt status under Internal Revenue Code Section 501(c)(3).

(3) Exemption "G" shall apply, but not be limited to, transfers made to The Nature Conservancy, Massachusetts Audubon Society, Inc., the Nantucket Land Council, Inc., the Nantucket Conservation Foundation, Inc., the Trustees of Reservations, and the 'Sconset Trust, so long as they remain charitable organizations as defined above.

4.11 THE "H" EXEMPTION

(1) As stated in Section 12 (h) of the Act, the "H" exemption applies to "Transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee, and transfers of the property subject to a mortgage to the mortgagee in consideration of the forbearance of the mortgagee from foreclosing said mortgage."

(2) In a foreclosure, the outstanding principal, interest, and other fees or expenses constituting debt under the mortgage foreclosed will not be included in the computation of the Fee due. In computing the Fee, all other consideration (that is, Purchase Price, as defined in the Act and these Regulations), including but not limited to the outstanding balance due on mortgages or liens superior to the foreclosed mortgage, shall be subject to the Fee.

(3) A claim of the "H" exemption shall require documented proof that the party foreclosing the mortgage is the current record holder of the mortgage being foreclosed and the amount of the principal, interest and expenses outstanding at the Time of Transfer on the foreclosed mortgage and any superior mortgage or lien.

(4) The "H" exemption shall apply when the Real Property Interest is transferred to an Entity of which the current record holder of the foreclosed mortgage is the sole owner, in which event the "D" exemption shall also be claimed and Form D together with all required documentation shall be filed. Otherwise, no transfer of Real Property Interest to a party other than the current holder of the foreclosed mortgage shall qualify for exemption "H".

(5) This exemption shall not apply to transfers to a mortgage holder where the transaction is not at arms length, or where the transaction is not commercially reasonable, or where the transaction is intended to evade the payment of the Fee.

4.12 THE "I" EXEMPTION

(1) As stated in Section 12 (i) of the Act, the "I" exemption applies to "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 to 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."

(2) A claim of the "I" exemption shall require filing with the Land Bank documented evidence of the formation of the Corporation, Partnership, Limited Liability Company, Limited Liability Partnership or other Entity, except a trust, the parties to the Entity, and the interests held by each party at the time of formation.

(3) The "I" exemption shall also be applicable to transfers of any Real Property Interests into a previously formed non-trust Entity; provided, however, that the Seller owns the same Real Property Interest in the Entity as the Seller owned in the transferred Real Property Interest.

(4) A claim of the "I" exemption by a previously formed non-trust Entity shall require filing with the Land Bank documents evidencing the formation of the Entity and the interests held by the parties thereto at the time of formation, prior to the Time of Transfer, and subsequent to the Time of Transfer.

4.13 THE "J" EXEMPTION

(1) As stated in Section 12 (j) of the Act, the "J" exemption applies to "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 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 received 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."

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

(3) As used in the "J" exemption a partial liquidation or dissolution of an Entity holding any Real Property Interest, is one in which the Entity continues to exist after the distribution.

4.14 THE "K" EXEMPTION

- (1) As stated in Section 12 (k) of the Act, the "K" exemption applies to "Transfers consisting of the division of marital assets under the provisions of section thirty-four of chapter two hundred and eight of the General Laws or other provisions of law."
- (2) The "K" exemption shall apply only to divisions of marital assets ordered by a court decree or when the transfer instrument states, "division of marital assets" and such decree or transfer instrument is filed with the Land Bank.
- (3) The "K" exemption does not apply to sales of any Real Property Interest to third parties, even if ordered by a court as part of a division of marital assets.

4.15 THE "L" EXEMPTION

- (1) As stated in Section 12 (l) of the Act, the "L" exemption applies to "Transfers of property consisting in part of Real Property Interests situated 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."
- (2) Pursuant to Section 10 of the Act, "...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."
- (3) Whenever there is a conveyance at or about the same time of Real Property Interests in real property situated both inside and outside Nantucket County, the allocation of payments between real property in Nantucket County and outside of Nantucket County agreed to by the Purchaser and Seller shall not determine the amount of the Fee due. Instead, the Commission may require payment of the Fee for full fair market value of the Real Property Interests in real estate situated in Nantucket County. The Commission may determine fair market value by utilizing the Town of Nantucket Assessor's value in effect at the Time of Transfer or an appraisal by an independent appraiser of the Commission's choice. The Commission may elect to retain the services of an independent appraiser of its choice or to adopt the opinion of an appraisal done in connection with the Transfer which the Commission deems to be independent, such as an appraisal prepared for the Purchaser's purchase money lender.
- (4) The Purchaser shall have the burden of proof by submitting a qualified independent appraisal to contest a valuation determined by the Commission.
- (5) The Purchaser shall provide a copy of any bill of sale for personal property transferred at the Time of Transfer.

4.16 THE "M" EXEMPTION

(1) As stated in Section 12 (m) of the Act, the "M" exemption applies to the M Exemption Amount of the "Purchase Price of a transfer made to a Purchaser who, or whose spouse at the Time of Transfer, has at no time before the said transfer owned or possessed any Real Property Interest as defined in section one either within or without 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 personally certify as to the foregoing (No representative signatures will be permitted.) 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."

(2) The Purchaser shall provide to the Land Bank documentation that may be requested by the Commission from time to time to confirm compliance with the requirements of the "M" exemption, including without limitation, information required by Form M. The Purchaser must occupy the Real Property which receives the exemption as Purchaser's full time permanent residence until at least the fifth anniversary of the Time of Transfer. Notwithstanding the provision of Section 12(m) of the Act, the Commission states as its current policy the "M" exemption shall remain available if the Purchaser occupies the Real Property Interest as Purchaser's domicile by no later than the second anniversary of the Time of Transfer. However, the Commission reserves the right to revise this policy to require occupancy by the first anniversary as stated in the Act. In order to confirm each Purchaser's intention to conform to the requirements of the "M" Exemption, Form M must be signed by all Purchasers and no representative signatures shall be permitted.

(3) Upon a final determination by the Commission of compliance with all the requirements of the "M" exemption, the Commission shall provide to the Purchaser a certificate of waiver or release of lien which the Purchaser shall record at the Purchaser's sole expense.

(4) Any Purchaser claiming eligibility for the "M" exemption must be a named Purchaser on the deed. With respect to a nominee form of ownership, refer to the following Paragraphs 5, 6, and 7.

(5) The "M" exemption applies to purchasing a Real Property Interest in the eligible person(s) individual names and also to purchasing a Real Property Interest through a nominee or Entity.

(6) In the event of a nominee form of ownership, the exemption shall apply only to nominees which are established for the sole purpose of holding real property and which execute a recordable affidavit relinquishing any future eligibility to claim the "M" exemption by the nominee and the individuals who are the principals (that is, the actual owners). The "M" exemption applies to nominee forms of ownership only if all of the principals would be entitled to the exemption if the property were recorded in their individual names. This exemption shall not be applied to situations where a nominee holds Real Property Interests for more than four (4) unrelated individuals.

(7) In the event the "M" exemption is claimed by an Entity on behalf of its beneficiaries, stockholders, members, or partners, then the Purchaser must provide a list of all owners of the Entity, including the proportion held by each owner. The "M" exemption shall be applied as if the parties who own the Entity were directly purchasing the Real Property Interest in their individual names. The exemption shall be granted only if a recordable affidavit relinquishing any future eligibility to claim the "M" exemption is executed by all of the owners of the Entity. The "M" exemption shall not be available to an Entity unless all the owners of the Entity are individual persons.

(8) In the event of multiple Purchasers, the "M" exemption shall apply proportionately to that portion of the Purchase Price which is paid by the individual or individuals claiming the exemption, however in no event shall the amount of the Purchase Price exempted in any transaction or series of related transactions exceed the M Exemption Amount.

(9) Domicile shall be determined on a case by case basis using the standards and tests applied by Massachusetts courts in determining domicile. Among the factors considered shall be whether or not an individual resides in the Real Property Interest as his/her permanent full time primary residence.

(10) In the event of non-compliance with the requirements of Section 12 (m) of the Act, the Fee, together with interest and penalty, shall accrue from the Time of Transfer, except in the case of a division of marital assets under the provisions of Section 34 of Chapter 208 of the General Laws or other provisions of law. In the event of such a division of marital assets, the Fee, together with interest and penalty, shall accrue from the date of non-compliance.

(11) In the event of a division of marital assets under the provisions of Section 34 of Chapter 208 of the General Laws or other provisions of law, when the Real Property Interest for which an "M" exemption was granted is transferred to either of the spouses who qualified for the "M" exemption, the requirements of the exemption shall continue to be in effect for the balance of the five year period described under Section 12(m) of the Act, provided that the other requirements of the "M" exemption are met for that period.

(12) In the event of the death of an owner who was granted the "M" exemption, the Fee, together with interest and penalty, shall be waived.

(13) A Purchaser who is otherwise qualified to receive the "M" exemption will not be disqualified from receiving the exemption if the Purchaser has previously owned an option or right of first refusal which was not exercised prior to the date of the transfer which is eligible for the "M" exemption.

(14) The granting of an option or right of first refusal to purchase a property which is subject to an "M" exemption on the date such option or right of first refusal is granted shall not, by itself, be deemed to terminate the exempt Purchaser's full time permanent residence at the property. Exercise of the rights under an option or right of first refusal such that the property is transferred within five years of the "M" exemption transfer shall be an event of non-compliance with the requirements of Section 12(m) of the Act.

(15) In the event that during the five year period described under Section 12(m) of the Act, a Purchaser who otherwise satisfies the requirements of the "M" exemption seeks to divide the Real Property Interest to which the "M" exemption applies (the "Original Property") for the purpose of creating a Real

Property Interest (the "O Property") for sale on terms to which the "O" Exemption applies, the O Property may be released from the "M" exemption lien without any payment being required, subject to compliance with the terms of this Section 4.16(15). Within a reasonable time after the O Property is conveyed in a manner satisfying all the requirements of the O Exemption, the Commission shall partially release the "M" exemption lien insofar as it encumbers the O Property. The "M" exemption lien shall continue in full force and effect on the balance of the Original Property for the remainder of the five year period, and the requirements of the "M" exemption shall continue to apply to the Purchaser of the Original Property as if the O Property had not been removed.

4.17 THE "N" EXEMPTION

(1) As stated in Section 12 (n) of the Act, the "N" exemption applies to "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."

(2) The Purchaser shall provide to the Land Bank documentation that may be requested by the Commission from time to time to confirm compliance with the requirements of the "N" exemption, including without limitation, information required by Form N.

4.18 THE "O" EXEMPTION

(1) As stated in Section 12 (o) of the Act, the Exemption "O" applies to the Purchase Price of a "Transfer of a real property interest that is subject to and used consistent with an affordable housing restriction; provided, however, that the affordable housing restriction has a term remaining at the time of the transfer of not less than 5 years; and provided further, that the purchaser shall make the real property interest, that is the subject of the transfer, the purchaser's actual domicile within 2 years 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 for a period lasting not less than the fifth anniversary of the transfer. Notwithstanding this paragraph, if the real property interest is transferred again within 5 years and the later transfer complies with this paragraph, a fee, interest or penalty shall not be due. If the holder of an affordable housing restriction determines within 5 years of the transfer that the real property interest to which it pertains is not being used consistent with the requirements of the affordable housing restriction or if a later transfer within 5 years that (sic) does not comply with this paragraph, the fee exempted hereunder shall become due, together with the accumulated interest and penalties calculated from the date of the transfer exempted hereunder. The purchaser shall certify as to the foregoing and the commission shall attach to the deed a certificate that 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 paragraph have been met."

(2) The Purchaser shall provide to the Land Bank documentation that may be requested by the Commission from time to time to confirm compliance with the requirements of the "O" exemption, including without limitation, information required by Form O. The Purchaser must occupy the Real Property which receives the exemption as Purchaser's full time permanent residence until at least the fifth anniversary of the Time of Transfer, unless the Purchaser sooner conveys the Real Property in a transaction which complies with the "O" exemption. As provided in Act Section 12(o), the "O"

exemption shall remain available if the Purchaser occupies the Real Property Interest as Purchaser's domicile by no later than the second anniversary of the Time of Transfer. In order to confirm each Purchaser's intention to conform to the requirements of the "O" Exemption, Form O (Page 1) must be signed by all Purchasers and no representative signatures shall be permitted.

(3) Upon a final determination by the Commission of compliance with all the requirements of the "O" exemption, the Commission shall provide to the Purchaser a certificate of waiver or release of lien which the Purchaser shall record at the Purchaser's sole expense.

(4) Any Purchaser claiming eligibility for the "O" exemption must be a named Purchaser on the deed. With respect to a nominee form of ownership, refer to the following Paragraphs 5, 6, and 7.

(5) The "O" exemption applies to purchasing a Real Property Interest in the eligible person(s) individual names and also to purchasing a Real Property Interest through a nominee or Entity, provided that such ownership does not violate the terms of the Affordable Housing Restriction applicable to the Real Property Interest.

(6) In the event of a nominee form of ownership, the exemption shall apply only to nominees which are established for the sole purpose of holding real property. The "O" exemption applies to nominee forms of ownership only if all of the principals would be entitled to the exemption if the property were recorded in their individual names.

(7) In the event the "O" exemption is claimed by an Entity on behalf of its beneficiaries, stockholders, members, or partners, then the Purchaser must provide a list of all owners of the Entity, including the proportion held by each owner. The "O" exemption shall be applied as if the parties who own the Entity were directly purchasing the Real Property Interest in their individual names. The "O" exemption shall not be available to an Entity unless all the owners of the Entity are individual persons.

(8) Domicile shall be determined on a case-by-case basis using the standards and tests applied by Massachusetts courts in determining domicile. Among the factors considered shall be whether or not an individual resides in the Real Property Interest as his/her permanent full time primary residence.

(9) In the event of non-compliance with the requirements of Section 12 (o) of the Act, the Fee, together with interest and penalty, shall accrue from the Time of Transfer, except in the case where non-compliance is caused solely by a division of marital assets under the provisions of Section 34 of Chapter 208 of the General Laws or other provisions of law. In the event of such a division of marital assets, the Fee, together with interest and penalty, shall accrue from the date of non-compliance.

(10) In the event of a division of marital assets under the provisions of Section 34 of Chapter 208 of the General Laws or other provisions of law, when the Real Property Interest for which an "O" exemption was granted is transferred to either of the spouses who qualified for the "O" exemption, the requirements of the exemption shall continue to be in effect for the balance of the five year period described under Section 12(o) of the Act, provided that the other requirements of the "O" exemption are met for that period.

(11) In the event of the death of an owner who was granted the "O" exemption, the Fee, together with interest and penalty, shall be waived, if the death would cause the Real Property Interest to no longer comply with the "O" exemption requirements.

(12) The granting of an option or right of first refusal to purchase a property which is subject to an "O" exemption on the date such option or right of first refusal is granted shall not, by itself, be deemed to terminate the exempt Purchaser's full time permanent residence at the property. Exercise of the rights under an option or right of first refusal such that the property is transferred within five years of the "O" exemption transfer shall be an event of non-compliance with the requirements of Section 12(o) of the Act, unless the transaction resulting from such exercise also qualifies for the "O" Exemption.

(13) For purposes of determining whether or not a Real Property Interest is being (or is not being) used consistent with the requirements of the Affordable Housing Restriction applicable to a transfer which received the "O" exemption, the Commission may rely without further investigation on a written statement from the holder of the Affordable Housing Restriction.

4.19 ADVANCE RULINGS

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

- (1) Any request for a ruling or determination is to be submitted in writing 60 days prior to the proposed Time of Transfer, and shall be accompanied by all proposed Transfer Documents.
- (2) Such request shall be accompanied by a fee of \$2,500 payable to the Land Bank.
- (3) The Commission shall hold a hearing and issue a ruling or determination prior to 10 days before the Time of Transfer.
- (4) Each Purchaser shall be entitled to only one such request for a particular transfer.
- (5) In the event of such a ruling or determination, the Commission shall process the transfer in accordance with its ruling, unless actual circumstances of the transfer are different from the circumstances presented in the request for the ruling or determination.
- (6) Informal consultations with Commission members or Land Bank staff prior to a transfer regarding possible application of an exemption to a proposed transfer shall not constitute a formal determination of exemption by the Commission and shall in no way bind the Commission.

SECTION 5-LIENS AND PENALTY AND INTEREST ASSESSED

5.01 LAND BANK LIENS

Pursuant to Section 14(c) of the Act, in the event that the Commission determines there has been a failure to pay all or any portion of a Fee assessed, the Commission is authorized to file a lien against the

real or personal property of a Purchaser for the delinquent Fee, together with penalty and interest running from the Time of Transfer to the time of payment in full.

5.02 LIEN RELEASES

- (1) No lien shall be waived or released until all requirements of the Act and these Rules and Regulations have been met, except as set forth in Paragraphs (2) and (3) below, and except the initial lien shall terminate not later than six years following the Time of Transfer. The Commission may initiate proceedings at any time prior to the expiration of such six year period to foreclose such lien.
- (2) Liens placed pursuant to the last sentence of Section 12(m) or the last sentence of Section 12(o) of the Act shall be waived or released in the event of a subsequent transfer to an Institutional Lender, as mortgagee, when the mortgagee acquires the Real Property Interest either in a foreclosure action, in lieu of foreclosure, or at auction.
- (3) Liens placed pursuant to the last sentence of Section 12(m) of the Act shall be waived or released in the event of a subsequent transfer to a party other than an Institutional Lender, as mortgagee, when the party acquires the Real Property Interest in a foreclosure auction. Such waiver shall not effect the Fee due on the Purchase Price paid at the foreclosure auction.
- (4) After a Commission determination of compliance with the Act, the Commission shall execute either a waiver or release of lien.
- (5) Fees and recording of a waiver or a release of lien shall be the sole responsibility of the Purchaser. Pursuant to Section 14(c) of the Act, "Such waiver or release shall be conclusive evidence that the lien upon the property covered by the waiver or release is extinguished."

5.03 CALCULATING PENALTY AND INTEREST

- (1) Pursuant to Section 13 of the Act, "A Purchaser who fails to pay all or any portion of the Fee established by section ten on or before the time when the same is due shall be liable for the following additional payments in addition to said Fee:" interest and penalties.
- (2) Pursuant to Section 13 of the Act, penalty without fraud or willful intent to defeat or evade the Fee begins to accrue 30 days after the Time of Transfer at a rate of five (5%) percent per month or portion thereof, not to exceed twenty-five (25%) percent of the Fee due. Penalty for fraud or willful intent to defeat or evade the Fee accrues at the Time of Transfer in an amount equal to the amount of the original Fee due. In the event of a disputed transfer, the Commission may elect to impose both penalties in the alternative.
- (3) Pursuant to Section 13 of the Act, interest accrues from the Time of Transfer at a rate of fourteen (14%) percent per annum.
- (4) Penalty and interest shall be paid based upon a year of 360 days and twelve 30-day months.

SECTION 6-REFUNDS

6.01 PURCHASER REQUEST FOR REFUND

- (1) Any request for refund, challenge, protest, or objection to any payment required pursuant to Section 2 of these Rules and Regulations, shall be made in writing within 30 days of the date the Certificate is affixed, except as is provided for in Section 11 of the Act regarding uncompleted transfers, which shall be made within 7 days of the date of the Certificate is affixed.
- (2) Except in the case of simple mathematical errors, upon receipt of a written request, the Commission shall hold a hearing and make a determination of whether any over-payment has occurred and of any amount refundable.
- (3) In the event of a Commission determination of over-payment, the Commission shall notify the Purchaser in writing by registered or certified mail within 15 days after said hearing of its determination and shall issue a refund to the Purchaser within 45 days of such determination.
- (4) Only sums over-paid are refundable. No interest shall accrue to the Purchaser on sums over-paid.
- (5) No request for a refund shall be reviewed by the Commission after a determination has been rendered pursuant to Subsection 6.01, Paragraph 2 of these Rules and Regulations.
- (6) Any party aggrieved by a determination of the Commission concerning a refund, may appeal to the district or superior court within three months of a determination of the Commission.
- (7) As stated in Section 14(a) of the Act, "Upon the failure to timely petition for a hearing, or appeal to said courts, within the time limits hereby established, the Purchaser shall be bound by the terms of the notification, assessment or determination, as the case may be, and shall be barred from contesting the Fee, and any interest and penalty, as determined by the Commission."

6.02 SIMPLE MATHEMATICAL ERRORS

- (1) A request for a refund due to a "simple mathematical error" shall be a request for refund which arises solely from an error in calculating the Fee paid, and which involves no change in the Purchase Price or in the Real Property Interest involved in the transfer.
- (2) In the event a request for a refund alleges a "simple mathematical error", the Commission may act promptly without a hearing to determine any overpayment which has occurred and any amount refundable.
- (3) If the Purchaser is aggrieved by a determination regarding a simple mathematical error, the Purchaser may file a written request for a hearing as described in Subsection 6.01, Paragraph 2.

SECTION 7-HEARINGS

7.01 DEFICIENCY ASSESSMENT

(1) In the event that the Commission determines that there has been a failure to discharge in full a Fee due under the Act, it shall issue a Notice of Assessment in the full amount of the Fee due under the Act and any penalty or interest assessed. Such Notice of Assessment may be superseded by a determination made by the Commission within 30 days of a request for a hearing and the completion of the hearing pursuant to Subsection 7.02 of these Rules and Regulations.

7.02 DEFICIENCY HEARING

(1) A request for a hearing pursuant to Section 14 of the Act to contest the assessment of a Fee, together with penalty and interest, shall be granted by the Commission upon receipt of a written request for a hearing received within 30 days of the original mailing date of Commission's Notice of Assessment, which date shall be clearly displayed on the Notice. The Commission may reconsider an assessment of a Fee any time prior to a hearing and within 30 days of the date of the Notice of Assessment, based upon new information received by the Commission subsequent to the assessment of a Fee.

(2) After a request for a hearing has been made, pursuant to this Subsection 7.02, the Purchaser may make a refundable payment of all or any part of the Fee, penalty, or interest assessed, without waiving its right to the requested hearing. In the event such payment is made, the hearing shall proceed in the same manner as if the deficiency had not been paid, except no interest or penalty shall accrue after the date of payment against that portion of the deficiency found to be due and previously paid.

7.03 HEARING DETERMINATION

(1) The Commission shall make a determination and render a written decision on the matter of the amount due or refundable within 15 days after a hearing. The time for the rendering of a hearing decision may be extended by the mutual consent of the parties.

(2) In the event the Commission determines that the amount of a deficiency is less than the amount paid pursuant to Subsection 7.02, Paragraph 2 of these Rules and Regulations, the Commission shall follow the refund procedures set forth in Section 6.

7.04 SUBPOENAS

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

SECTION 8-COLLECTION OF THE FEE ON CERTAIN UNRECORDED TRANSFERS

8.01 PURPOSE

The Fee is imposed by the Act on transfers of Real Property Interest that are recorded in the Registry (See Subsections 2.03 and 2.05 of these Rules and Regulations) and also on certain transfers not recorded in the Registry (See Subsection 2.04 of these Rules and Regulations). The Commission finds that there exist efforts to avoid payment of the Fee by means of unrecorded transfers and that additional enforcement tools are necessary to carry out the purposes of the Act. Accordingly, the Commission, by adoption of this Section of its Rules and Regulations, intends to follow the legislative purpose by clearly imposing on a party seeking recordation of any Transfer Document (a) the obligation of disclosure of transfers to which the Fee may apply during the period between the date of recordation of the last Transfer Document of record applicable to all or a portion of the subject Real Property Interests and the date of presentation of proposed Transfer Documents for recordation and (b) the obligation to establish (either by substantial evidence or by delivering payment) that the Fee, together with any applicable penalties and interest, as may be imposed under the Act on each and every unrecorded transfer has been paid in full.

8.02 FORMS

In order to implement the purpose set forth in Subsection 8.01, whenever the Seller or Purchaser is an Entity, no Land Bank Certificate shall be affixed to any Transfer Document until Land Bank Form 2 as described in Subsection 2.01 has been submitted and accepted providing under pains and penalties of perjury full and complete disclosure of all unrecorded transfers of Real Property Interest (including transfers described in Subsection 2.04 of these Rules and Regulations).

8.03 AT TIME OF FILING, ALL UNPAID FEES ARE DUE AND PAYABLE

In order to implement the purposes set forth in Subsection 8.01, no Land Bank Certificate shall be affixed to any Transfer Document until the party presenting the Transfer Document to be recorded establishes (either by substantial evidence or by delivering payment) that the Fee, together with any applicable penalties and interest, on each and every transfer of Real Property Interest not exempted from the Fee by Section 12 of the Act, occurring between the date of the last recorded Transfer Document and the date of presentation of new Transfer Documents for recordation, has been paid in full to the Commission.

8.04 SPECIAL RULES APPLICABLE TO LENDERS

In applying this Section to lenders, mortgage foreclosures shall trigger an obligation on the part of the lender to provide the submittals described in Subsection 8.02 to the best information known to or reasonably available to such lender and such lender shall otherwise be exempt from the requirements of Subsections 2.04 and 8.03.

8.05 SPECIAL RULES APPLICABLE WHERE LAST RECORDED DEED PRECEDES EFFECTIVE DATES

The effective date of the Act was February 1, 1984. For purposes of this Section, if the last recorded Transfer Document predates the effective date of the Act, the requirements of Subsections 8.02 and 8.03

shall apply only to the period from February 1, 1984 to the date of presentation of the Transfer Documents to the Commission. With respect to transfers made subject to the Fee imposed by Section 10A of the Act, the effective date of such Section 10A was February 5, 1988, and it was repealed effective January 6, 2011; with respect to such transfers only, if the last recorded Transfer Document predates February 5, 1988, the requirements of Subsections 8.02 and 8.03 shall apply for purposes of Section 10A of the Act only to the period from February 5, 1988 to January 6, 2011.

SECTION 9 - COLLECTION METHODS

The Commission may collect Fees, penalties, interest and other related charges due by means of any or all of the following:

- (a) Placement of a lien against any real property or personal property of the Purchaser;
- (b) A suit against the Purchaser(s);
- (c) Withholding or revoking of a Certificate until such amounts due under Rules and Regulations have been paid;
- (d) Any other means available to the Commission under law.

EXHIBITS

Exhibit 1:	Land Bank Form 1 as amended, attached.
Exhibit 2:	Land Bank Form 2, as amended, attached.
Exhibit 3:	Land Bank Certificate, as amended, attached.
Exhibit A:	Land Bank Form A, as amended, attached.
Exhibit B:	Land Bank Form B as amended, attached.
Exhibit C:	Land Bank Form C, as amended, attached.
Exhibit D:	Land Bank Form D, as amended, attached.
Exhibit E:	Land Bank Form E, as amended, attached.
Exhibit F:	Land Bank Form F, as amended, attached.
Exhibit G:	Land Bank Form G, as amended, attached.
Exhibit H:	Land Bank Form H, as amended, attached.
Exhibit I-1:	Land Bank Form I-1, as amended, attached.
Exhibit I-2:	Land Bank Form I-2, as amended, attached.
Exhibit J:	Land Bank Form J, as amended, attached.
Exhibit K:	Land Bank Form K, as amended, attached.
Exhibit L:	Land Bank Form L, as amended, attached.
Exhibit M:	Land Bank Form M, as amended, attached.
Exhibit N:	Land Bank Form N, as amended, attached.
Exhibit O:	Land Bank Form O, new, attached.