

Real Property Law §§ 462, 462(1), 463, 463(4), 463(6), 463(11), 463(13), 465(1); Not-For-Profit Corporation Law §§ Art 16, 1601, 1603, 1603(a), 1603(b), 1603(h), 1605(l), 1607, 1607(a)(12), 1607(a)(13), 1607(a)(15), 1612(a), 1617(b); Public Authorities Law §§ 2(2)(e), 6(1)(a); Public Officers Law §§ 73, 74

The Greater Syracuse Property Development Corporation, a land bank, is a “governmental entity” for the purpose of Article 14 of the Real Property Law and, as such, it need not provide a disclosure statement when it sells residential real property.

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John P. Sidd
Menter, Rudin & Trivelpiece, P.C.
Counsel, Greater Syracuse Property
Development Corp.
308 Maltbie Street, Suite 200
Syracuse, NY 13204-1439

Informal Opinion
No. 2014-5

Thomas R. Babilon
Assistant Corporation Counsel
City of Syracuse
233 E. Washington Street
300 City Hall
Syracuse, NY 13202

Dear Messrs. Sidd and Babilon:

You have requested an opinion as to whether the Greater Syracuse Property Development Corporation (“Land Bank”) is exempt from providing to purchasers of real property a Real Property Disclosure Statement as required by Real Property Law § 462(1). As explained below, we are of the opinion that the Land Bank is exempt from the disclosure requirement because of its status as a governmental entity.

A. Real Property Disclosure Statement

A seller of residential real property must complete and sign a Real Property Disclosure Statement (“disclosure statement”) and deliver it to a buyer before the buyer signs a binding contract of sale. Real Property Law § 462. The purpose of the disclosure statement is to inform the buyer of certain environmental, structural, mechanical system, and similar conditions associated with the real property. *Id.* A seller who fails to provide a disclosure statement to a buyer must give the buyer a \$500 credit against the agreed-upon purchase price when title is transferred. Real Property Law § 465(1).

A disclosure statement is not required for every type of transfer of residential real property. Certain types of transfers are statutorily exempted including, for example, a transfer pursuant to a foreclosure sale that follows a default in the satisfaction of an obligation that is secured by a mortgage, a transfer by a mortgagee who has acquired the residential real property by a deed in lieu of foreclosure, a transfer by a sheriff (who executes judgments taken on real property to satisfy debts), and, most relevant here, a “transfer to or from the state, a political subdivision of the state, or another governmental entity.” Real Property Law § 463(4),(6),(11),(13). Unlike a seller who occupies or occupied the real property subject to transfer, the sellers in these exempted types of transfers are unlikely to have sufficient information about the property to meaningfully complete the disclosure statement. This appears to be the reason for exempting these transfers. See Letter from Ronald B. Steed, president, New York State Ass’n of Realtors, to James M. McGuire, counsel to the Governor (Nov. 5, 2001), *reprinted in* Bill Jacket for ch. 456 (2001), at 12; Karl B. Holtzschue, Practice Insights: Exemptions under Property Condition Disclosure Act, 28A N.Y. Real Property Law § 463 at 241 (Consol. Supp. 2002).

B. The Governmental Nature of a Land Bank

The Land Bank is established pursuant to Article 16 of the Not-for-Profit Corporation Law (NFPCL), which provides for the creation of a land bank as a not-for-profit corporation by one or more local governments. NFPCL §§ 1603, 1607. The primary function of a land bank is to acquire real property that is tax delinquent, tax foreclosed, vacant, or abandoned and return such property to productive use. NFPCL § 1601. To achieve this function, a land bank is empowered to construct, rehabilitate, renovate, and otherwise improve real property it acquires and then rent, lease, or sell it. NFPCL § 1607(a)(12),(13),(15).

The statutory provisions governing the creation and operation of a land bank demonstrate that the Legislature regarded it as a governmental entity in numerous respects. A land bank created pursuant to Article 16 must be created by one or more local governments. NFPCL § 1603(a),(b). It constitutes a “local authority” as used in the Public Authorities Law and, as such, it is subject to oversight by the Authorities Budget Office. Public Authorities Law §§ 2(2)(e), 6(1)(a). It is subject to audit by the Office of the State Comptroller. NFPCL § 1603(h). A land bank is subject to the Open Meetings Law and the Freedom of Information Law, which generally govern governmental entities. NFPCL. § 1612(a). For certain purposes it is treated as a state agency. For example, its directors, officers, and employees are deemed state officers or employees for the purposes of sections 73 and 74 of the Public Officers Law, which prohibit specific acts by state officers and employees to avoid conflicts of interest. NFPCL § 1605(l). And a land bank is deemed a “state agency” subject to state law governing access to state contracting opportunities by minority- and women-owned businesses. NFPCL § 1617(b).

Indeed, the legislative history demonstrates that the Legislature intended for land banks to operate as the equivalent of local public authorities, to be created by local governments. Because local governments do not have the constitutional power to create public authorities, the Legislature selected the not-for-profit corporation form instead, and then deemed a land bank a “local authority” for purposes of the Public Authorities Law, *see* Public Authorities Law § 2(2)(e). Assembly Mem. in Support of Legislation (2011), *reprinted in* Bill Jacket for ch. 257 (2011), at 14; *see also* N.Y. Const., Art. 10, § 5.

Moreover, the conclusion that a land bank is a “governmental entity” exempt from the disclosure statement requirement is supported by the apparent rationale for the exemption: non-occupying sellers are exempted from the disclosure requirement because they typically do not have the knowledge needed to complete a meaningful disclosure statement, and that rationale is fully applicable to the land bank.

We therefore are of the opinion that the Land Bank is a “governmental entity” for the purpose of Article 14 of the Real Property Law and, as such, it need not provide a disclosure statement when it sells residential real property.

The Attorney General issues formal opinions only to officers and departments of state government. Thus, this is an informal opinion rendered to assist you in advising the municipality you represent.

Very truly yours,

KATHRYN SHEINGOLD
Assistant Solicitor General
in Charge of Opinions