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Addressing Abandonment in New Orleans and Illuminating the Need for Land Banking

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I. INTRODUCTION

New Orleans has long struggled with one of the worst blight problems in the country.¹ Historically, New Orleans has been largely ineffective at combating blight and abandonment.² In 2005, Hurricane Katrina struck the city and intensified the problem.³ Although blight reduction efforts made in reaction to Katrina have now offset the storm's impact, blight and abandonment remains a problem today.⁴ Louisiana and, specifically, New Orleans must proactively combat vacant, abandoned, and blighted property and return those properties to productive use.

Currently, the New Orleans Redevelopment Authority (NORA) is the entity best suited to address blight and abandonment in New Orleans. This Comment argues that while NORA is statutorily capable to operate as New Orleans's land bank, Louisiana should amend the current statutes governing NORA to better facilitate land banking. More specifically, this Comment details how land banking could be implemented in New Orleans. Part II introduces the concept of land banking as a method to combat the deleterious effects of blighted and abandoned properties. In doing so, Part II gives a history of where land banks have been used and explains the powers of acquisition, management, and disposition of land banks. Part III exhibits the current issues of abandonment in New Orleans. Moreover, Part III reflects on the methods of blight reduction that have been used in New Orleans and details the growth of NORA's statutory authority to combat blight. Part IV then examines how New Orleans could benefit from land banking and what changes need to be made to implement land banking as a solution. Part V concludes by stressing NORA's potential to operate as a land bank in New Orleans.

1. Gillian B. White, *A Housing Crisis Amid Tens of Thousands of Abandoned Homes*, ATLANTIC (Aug. 20, 2015), <https://www.theatlantic.com/business/archive/2015/08/new-orleans-blight-hurricane-katrina/401843/>; see also BUREAU OF GOVERNMENTAL RESEARCH, MENDING THE URBAN FABRIC: BLIGHT IN NEW ORLEANS, PART I: STRUCTURE & STRATEGY 1 (2008), https://www.bgr.org/wp-content/uploads/2017/07/BGR_blight_report_1.pdf ("New Orleans has for decades suffered from pervasive blight.").

2. BUREAU OF GOVERNMENTAL RESEARCH, *supra* note 1, at 1; see also White, *supra* note 1 ("New Orleans isn't a city that's exactly known for its speedy or efficient processes. And blight remediation is a slow slog . . .").

3. BUREAU OF GOVERNMENTAL RESEARCH, *supra* note 1, at 1; White, *supra* note 1.

4. Jaquetta White, *Blight in New Orleans Is Back to Pre-Katrina Levels, but Challenges Remain*, ADVOCATE (Aug. 29, 2015), http://www.theadvocate.com/baton_rouge/news/article_91d27e96-ec2f-50bb-a205-48a394d128ab.html.

II. BACKGROUND

Many urban areas face a significant amount of vacant and abandoned properties and are unable to deal with those properties effectively. Over the years, land banks have developed as an increasingly popular mechanism utilized by local governments to fight the harmful effects of blighted and abandoned properties.

A. Early Land Banks

Land banking first emerged as an urban planning tool in the 1960s as a reaction to urban areas experiencing two related trends: urban sprawl and inner-city abandonment.⁵ The first land banks initially focused on addressing abandoned, tax-delinquent properties.⁶ Due to antiquated tax foreclosure laws, the private market lacked access to those properties, which necessitated the creation of land banks to facilitate the movement of the growing inventory of abandoned, tax-delinquent properties.⁷ The first land banks were successful, but only when measured against their limited power and viewed in light of the difficult inventory of property they confronted. These early land banks lacked the full capacity to effectively and efficiently convert the tax-delinquent properties due to the absence of dedicated funding, antiquated tax foreclosure laws left unamended, and inadequate intergovernmental collaboration.⁸ States reacted to these limitations by enacting more sweeping legislative reforms.⁹

5. FRANK S. ALEXANDER, *LAND BANKS AND LAND BANKING* 18 (2d ed. 2015). Land banks, envisioned as the solution to these dual trends, were proposed as land reserves that would enable local governmental entities to acquire land to be held for future use. *Id.*

6. *Id.* at 19.

7. *Id.* The growing inventory was due to tax liens exceeding both the fair market value and the state law minimum auction bids, causing properties to never be sold at tax sale. *Id.* Adding to the problem, tax sales that did convey ownership were often to investors who elected to neither invest in the properties nor pay taxes, which left those properties in a continuous cycle of delinquency. *Id.*

8. *Id.* at 20. Most of the tax foreclosure laws were flawed in two ways, leaving the properties “tangled in a lengthy maze of archaic procedures and statutorily required waiting and redemption periods” and without marketable and insurable title. *Id.*

9. *Id.* at 20-21; see, e.g., Act No. 258, 2003 Mich. Pub. Acts 1357; Act No. 123, 1999 Mich. Pub. Acts 732.

Some form of land banking legislation has now been introduced and enacted in fifteen states.¹⁰ Currently there are approximately 170 land banks or land banking operations throughout the United States.¹¹

B. *Modern Land Banking*

Today, land banks are quasi-governmental or nonprofit entities created to convert vacant, abandoned, tax-delinquent, and foreclosed properties into productive use.¹² Land banking, then, refers to the process by which property is acquired and either immediately converted into productive use or strategically held by the land bank for future purposes.¹³ Modern land banks are a direct response to the increasing amount of abandoned property in urban areas.¹⁴ They target properties rejected by the private market that are left as liabilities and serve to convert those liabilities into assets.¹⁵ Local governments have used land banks because they are flexible tools aimed at eliminating “the structural and systemic obstacles that encourage abandonment”

10. Comprehensive land banking legislation was first enacted in 2003 by Michigan. MICH. COMP. LAWS ANN. §§ 124.751-.774 (West 2006 & Supp. 2018) (enacted by Act No. 258, 2003 Mich. Pub. Acts 1357). Michigan was followed by Ohio in 2008, OHIO REV. CODE ANN. §§ 1724.01-.12 (West 2009 & Supp. 2018), and New York in 2011, N.Y. NOT-FOR-PROFIT CORP. LAW §§ 1600-1617 (McKinney 2015 & Supp. 2019). In 2012, legislation was enacted in Georgia, GA. CODE ANN. §§ 48-4-100 to -112 (2017 & Supp. 2018), Missouri, MO. REV. STAT. §§ 141.980-.1015 (2016), Pennsylvania, 68 PA. CONS. STAT. ANN. §§ 2101-2120 (West Supp. 2018), and Tennessee, TENN. CODE ANN. §§ 13-30-101 to -120 (Supp. 2018). Those four states were followed by Nebraska, NEB. REV. STAT. §§ 19-5201 to -5218 (Supp. 2018), and Alabama in 2013, ALA. CODE §§ 24-9-1 to -10 (2016 & Supp. 2018), and West Virginia in 2014, W. VA. CODE §§ 31-21-11 to -20 (LexisNexis 2015). Land banking legislation has also been enacted in Delaware, Illinois, Indiana, Kentucky, and Texas. *See* DEL. CODE ANN. tit. 31, §§ 4701-4719 (West 2015 & Supp. 2019); 20 ILL. COMP. STAT. 3501/815-5 to -30 (2016); IND. CODE §§ 36-7-38-1 to -23 (2018); KY. REV. STAT. ANN. §§ 65.350-.375 (West 2006 & Supp. 2018); TEX. LOC. GOV'T CODE ANN. §§ 379C.001-015 (West 2005 & Supp. 2018).

11. *National Map of Land Banks & Land Banking Programs*, CTR. FOR COMMUNITY PROGRESS, <http://www.communityprogress.net/land-bank-map-pages-447.php> (last updated Apr. 2019).

12. U.S. DEP'T OF HOUS. & URBAN DEV., REVITALIZING FORECLOSED PROPERTIES WITH LAND BANKS 1 (2009), <https://www.huduser.gov/portal/publications/landbanks.pdf>; *Frequently Asked Questions on Land Banking*, CTR. FOR COMMUNITY PROGRESS, <http://www.communityprogress.net/land-banking-faq-pages-449.php> (last visited Apr. 5, 2019).

13. ALEXANDER, *supra* note 5, at 23.

14. *Frequently Asked Questions on Land Banking*, *supra* note 12.

15. ALEXANDER, *supra* note 5, at 10; *Frequently Asked Questions on Land Banking*, *supra* note 12; *see also* Frank S. Alexander, *Land Bank Strategies for Renewing Urban Land*, 14 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 140, 140 (2005) (“[P]roperties at the heart of ‘urban blight’ can and should be viewed as assets for community development and redevelopment.”).

and ushering properties back into productive use.¹⁶ The flexibility of land banks is found in the means by which they are created and the authority they are given. While such a tool has been successfully implemented in a number of cities, land banks are not problem free.

1. Creation and Structure

Land banks are typically first authorized by enabling legislation at the state level.¹⁷ A land bank must then be created by a local government through ordinances or intergovernmental agreements.¹⁸

Land banks may exist as a separate, independent entity or as a program within the local government.¹⁹ If set up as a separate entity, a board of directors typically governs the land bank in line with the land bank's bylaws and articles of incorporation.²⁰ Land banks that operate as separate entities tend to have greater control and flexibility that allows them to effectively and efficiently convert property.²¹ The advantage of operating as a separate legal entity is that the "land bank possesses a degree of autonomy and independence from the levels of agencies and departments and political considerations that may characterize a local government structure."²² Additionally, land banks that are separate entities may operate "independent of ordinances or other local anomalies that may slow down acquisition and/or distribution of land."²³

2. Authority

The authority a land bank possesses dictates its operations; its ability to acquire, manage, and dispose of property depends on its statutory authority. Land banks may be authorized to acquire properties using various methods. Land banks may acquire property through (1) tax foreclosure proceedings, (2) discretionary transfers of

16. Alexander, *supra* note 15, at 140-41.

17. See U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 12, at 1-2.

18. *Id.* However, some land banks have been created without state enabling legislation. See ALEXANDER, *supra* note 5, at 22.

19. Alexander, *supra* note 15, at 142.

20. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 12, at 1-2.

21. See FRANK S. ALEXANDER, LAND BANK AUTHORITIES: A GUIDE FOR THE CREATION AND OPERATION OF LOCAL LAND BANKS 41 (2005), <https://www.hudexchange.info/resources/documents/LandBankAuthoritiesGuideforCreationandOperation.pdf>; KEVIN E. O'BRIEN ET AL., BEST PRACTICES IN LAND BANK OPERATION 21-22 (2005), <https://www.hudexchange.info/resources/documents/Best-Practices-In-Land-Bank-Operations.pdf>.

22. ALEXANDER, *supra* note 21, at 41.

23. O'BRIEN ET AL., *supra* note 21, at 22.

publicly owned property, (3) voluntary transfers of privately owned property, and (4) purchases on the private market.²⁴

First, land banks may acquire property through tax foreclosure, which is the most frequently used method of acquisition.²⁵ In some states, a land bank automatically receives title to properties that are not sold for the statutory minimum at tax sale.²⁶ In others, the land bank will preselect which properties are to be conveyed in the event that the properties are not sold at tax sale for the statutory minimum.²⁷ In states where tax foreclosure proceedings end in forfeiture instead of a sale, land banks are authorized to receive properties forfeited to the state.²⁸

Generally, the minimum authority given to land banks to acquire property through tax foreclosure is the discretionary authority to place the minimum bid at a tax foreclosure sale.²⁹ Limitations are rarely placed on the kind of property land banks may receive through tax foreclosure; land banks may receive title to any kind of property—real or personal, vacant or improved, commercial or residential.³⁰ The ability to acquire property at tax foreclosure sales, with little limitation placed on that ability, allows land banks to provide instant impact. Tax-delinquent properties by definition do not contribute to the community, and enabling land banks to acquire those properties is the first step in getting them back into commerce.

24. Eminent domain has been contemplated as an additional acquisition device for land banks. ALEXANDER, *supra* note 5, at 53. However, there is hesitation to give land banks the power of eminent domain. After *Kelo v. City of New London*, many state constitutions limited the ability to use eminent domain for redevelopment purposes, thereby rendering a land bank's ability to acquire property through eminent domain useless. *See id.* (citing 545 U.S. 469 (2005)). It has also been argued that because local governments possess the power of eminent domain and because they may be held accountable by the electorate, the power of eminent domain should be left to local governments. *Id.* Even in states that do not constitutionally prohibit redevelopment as a public use to justify the use of eminent domain, using eminent domain for redevelopment is frequently met with much public opposition. *Id.* For these reasons, the power of eminent domain has not been given to land banks.

25. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 12, at 2.

26. *See, e.g.*, KY. REV. STAT. ANN. § 65.375(1) (West 2006 & Supp. 2018); MO. REV. STAT. § 92.830 (2016).

27. *See, e.g.*, OHIO REV. CODE ANN. §§ 323.77, 5722.04 (West Supp. 2018).

28. *See, e.g.*, MICH. COMP. LAWS ANN. § 124.755(3)(b) (West 2006).

29. *See, e.g.*, GA. CODE ANN. § 48-4-64(a) (2017).

30. ALEXANDER, *supra* note 5, at 51; *see, e.g.*, MICH. COMP. LAWS § 124.755. However, limitations may be placed on a land bank's ability to acquire certain properties. ALEXANDER, *supra* note 5, at 51. States may place limitations on a land bank's ability to acquire properties that are either unimproved or those in which the local government has commenced demolition proceedings against. *Id.*

The second method by which land banks may acquire property is through discretionary transfers of publicly owned property.³¹ Local governments may acquire ownership of property, intentionally or unintentionally, through a variety of methods. The inventory of publicly owned property may include property previously acquired through a lien foreclosure process or other forfeiture process, excess property originally acquired for a large public project that now remains unused, property owned by the government that is no longer used for its original functions, and property donated to the government by a private owner.³² The discretionary transfer of publicly owned property is necessary to facilitate movement of property and to prevent property from being hindered by administrative obstacles and held unused in perpetuity. Because land banks are often afforded more flexibility than the government in transferring property and are particularly focused on converting property, the discretionary transfer of publicly held property to a land bank places the property in more capable hands and allows for more efficient management and disposition.

Third, land banks may acquire property through voluntary donations or transfers from private owners.³³ In some states, land banks are enabled to receive properties through a deed in lieu of tax foreclosure—which essentially allows an owner to give the land bank his property to satisfy his delinquent taxes and liens.³⁴ In other states, land banks are expressly authorized to accept donative transfers.³⁵ The transfer of privately owned property to a land bank essentially formalizes a property owner's abandonment of his property and places the property in the capable hands of the land bank to then convert.

Lastly, land banks may be empowered to purchase property on the open market.³⁶ Compared to other acquisition methods, a purchase on the open market may be more expensive for a land bank, but the power to do so is nevertheless essential to land assembly.³⁷ The ability to strategically target and acquire properties enables a land bank to

31. ALEXANDER, *supra* note 5, at 51; *see, e.g.*, MICH. COMP. LAWS ANN. § 124.770.

32. FRANK S. ALEXANDER, RENEWING PUBLIC ASSETS FOR COMMUNITY DEVELOPMENT 9-10 (2000), <https://www.hudexchange.info/resources/documents/RenewingPublicAssets.pdf>.

33. ALEXANDER, *supra* note 5, at 52.

34. *See, e.g.*, MICH. COMP. LAWS ANN. § 124.756; OHIO REV. CODE ANN. § 5722.10 (West 2007 & Supp. 2018).

35. *See, e.g.*, 68 PA. CONS. STAT. ANN. § 2109 (West Supp. 2018).

36. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 12, at 2.

37. *Id.*

negotiate the acquisition of a specific property to assemble land to then use for redevelopment.³⁸

Once a land bank acquires title to vacant, abandoned, tax-delinquent, and foreclosed properties, it must be able to handle the inventory. Most land banks are required to maintain a list of all property held by the land bank and must classify the properties according to potential use.³⁹ Inventory management also presents significant challenges because the inventory often consists of properties with dilapidated and deteriorating structures, which the land bank must oversee and maintain.⁴⁰

State legislation may empower land banks to efficiently manage inventory by granting the ability to lease, rent, repair, insure, and alter property.⁴¹ Ultimately, a land bank may be empowered to demolish a dilapidated and deteriorating structure on the property.⁴² Additionally, some states give land banks the authority to contract with third parties to perform necessary maintenance of the properties in their inventory.⁴³ As an added benefit, land banks are usually afforded the ability to hold land exempt from taxes.⁴⁴ Also, because of the typically neglected nature of the inventory, state legislation usually limits the land bank's liability resulting from the properties held.⁴⁵ These advantages and protections enable a land bank to efficiently manage its inventory.

Because the ultimate goal of a land bank is to convert vacant, abandoned, tax-delinquent, and foreclosed properties into productive use, land banks must be empowered to dispose of the properties

38. Alexander, *supra* note 15, at 152.

39. See GA. CODE ANN. § 48-4-63(b) (2017); KY. REV. STAT. ANN. § 65.370(2) (West 2006 & Supp. 2018); MICH. COMP. LAWS ANN. § 124.757(2); MO. REV. STAT. §§ 92.900(1), 92.910 (2016); N.Y. NOT-FOR-PROFIT CORP. LAW § 1608(h) (McKinney 2015 & Supp. 2019); OHIO REV. CODE ANN. § 5722.06(B)-(C).

40. ALEXANDER, *supra* note 5, at 53.

41. See, e.g., KY. REV. STAT. ANN. § 65.370(2)(d) ("The authority shall have the power to manage, maintain, protect, rent, lease, repair, insure, alter, sell, trade, exchange, or otherwise dispose of any property . . ."); MO. REV. STAT. § 92.875(1) ("Such authority shall have and exercise all the powers . . . necessary and incidental to the effective management, sale, transfer or other disposition of real estate . . .").

42. See, e.g., MICH. COMP. LAWS ANN. § 124.756; see also *Crew Demolishes Eminem's Childhood Home in Detroit*, CBS DETROIT (Nov. 20, 2013), <http://detroit.cbslocal.com/2013/11/20/crew-demolishes-eminems-childhood-home-in-detroit/> (demonstrating Michigan Land Bank's decision to demolish a property deemed structurally unsafe after a fire).

43. Alexander, *supra* note 15, at 152-53.

44. See, e.g., MICH. COMP. LAWS ANN. § 124.754(5) ("The property of an authority and its income and operations are exempt from all taxation by this state or any of its political subdivisions.").

45. See, e.g., OHIO REV. CODE ANN. § 5722.22 (West 2007 & Supp. 2018).

acquired. Land banks are given more flexibility in conveying properties to third parties than local governments who are often constrained by the law.⁴⁶ Local governments are usually restricted to selling property to third parties at fair market value.⁴⁷ That restriction fails to address the nature of the properties that need to be lifted out of abandonment, which are often unattractive purchases that have tax delinquencies outweighing the fair market value.⁴⁸ State legislation enables land banks to overcome this problem through tax exemption and by allowing them to dispose of property below fair market value,⁴⁹ making the properties in the land bank's inventory more attractive to third-party purchasers.

Additionally, to help with disposition of property, land banks may be empowered "to extinguish all county and city or consolidated government taxes" upon the sale of property.⁵⁰ This power provides another way for land banks to make tax-delinquent properties more attractive for third parties to purchase and redevelop and furthers the goal of converting delinquent properties into productive properties that generate tax revenue.⁵¹ The taxes may be extinguished automatically upon the land bank's acquisition or upon consent by the applicable taxing authority.⁵² Moreover, the power to extinguish taxes may be used by land banks to encourage "conduit transfers," in which private third parties purchase tax-delinquent properties and convey the property to the land bank to extinguish the taxes, at which point the property is then conveyed back to the third party.⁵³ This creates more active participants converting abandoned property because it allows individuals in the private market to target property they are prepared to redevelop.⁵⁴

Land banks must also be empowered to convey full ownership in property they acquire and subsequently relinquish. The vacant and

46. ALEXANDER, *supra* note 5, at 54.

47. See Alexander, *supra* note 15, at 153.

48. See *id.*

49. See, e.g., GA. CODE ANN. § 48-4-63(c) (2017); KY. REV. STAT. ANN. § 65.370(7) (West 2006 & Supp. 2018).

50. See, e.g., GA. CODE ANN. § 48-4-64(c).

51. See ALEXANDER, *supra* note 21, at 27.

52. See, e.g., KY. REV. STAT. ANN. § 65.375(2) ("When a property is acquired by the [land bank] authority, all state, county, city, and school district taxes shall be extinguished."); MICH. COMP. LAWS ANN. § 124.756(4) (West 2006) ("Upon approval of the affected taxing jurisdictions and the foreclosing governmental unit, all of the unpaid general ad valorem taxes and specific taxes levied on the property, whether recorded or not, shall be extinguished.")

53. Alexander, *supra* note 15, at 154-55.

54. *Id.* at 155.

abandoned properties typically acquired are often burdened with numerous title defects “that inhibit or impair the marketability of the property.”⁵⁵ Enabling legislation that modifies tax foreclosure laws and allows for expedited quiet title actions may counteract the inevitable title defects.⁵⁶

III. NEW ORLEANS, ABANDONMENT, AND LAND BANKING (OR A LACK THEREOF)

New Orleans, like many other urban cities, faces high levels of vacant and abandoned property. New Orleans has implemented measures to combat the problem, but its success has been limited by inaction and lack of focus.

A. *Abandonment in New Orleans*

Abandonment and blight is nothing new in New Orleans.⁵⁷ The number of abandoned and blighted properties is a result of years of population decline,⁵⁸ which was exacerbated by Hurricanes Katrina and Rita.⁵⁹ These properties are correlated with a decrease in the quality of life in neighborhoods across New Orleans and impose costs on the municipality, the community, and the individual.⁶⁰ NORA,

55. *Id.* at 146.

56. ALEXANDER, *supra* note 5, at 36; *see, e.g.*, MICH. COMP. LAWS § 124.759.

57. *See* Act No. 170, 1968 La. Acts 355, 356 (recognizing that areas of New Orleans “have become slum and blighted”); *see also* Act No. 349, 2004 La. Acts 1480, 1480 (acknowledging the same).

58. The population of New Orleans has been steadily declining since 1960. *See* U.S. CENSUS BUREAU, LOUISIANA: 2010, POPULATION AND HOUSING UNIT COUNTS 23 tbl.8 (2012) [hereinafter 2010 UNIT COUNTS]; BUREAU OF THE CENSUS, 1990 CENSUS OF POPULATION AND HOUSING 593 tbl.46 (1993) [hereinafter 1990 UNIT COUNTS]. Census data shows the population of New Orleans has fallen from 627,525 in 1960, to 593,471 in 1970, to 557,927 in 1980, to 496,938 in 1990, to 484,674 in 2000, and to 343,829 in 2010. 2010 UNIT COUNTS, *supra*; 1990 UNIT COUNTS, *supra*.

59. New Orleans saw its greatest population decline of nearly thirty percent between 2000 and 2010. *See* 2010 UNIT COUNTS, *supra* note 58, at 23 tbl.8; 1990 UNIT COUNTS, *supra* note 58, at 593 tbl.46.

60. *See* NAT’L VACANT PROPS. CAMPAIGN, VACANT PROPERTIES: THE TRUE COSTS TO COMMUNITIES 2 (2005), http://www.communityprogress.net/filebin/pdf/toolkit/NVPC_VacantPropertiesTrueCosts.pdf; *see also* Coleman Warner, *Abandoned Houses Stuck in Bureaucracy*, TIMES-PICAYUNE, Feb. 1, 1995, at A1 (“The rundown buildings are cancers in many neighborhoods, stunting growth, driving down property values and providing havens for vagrants and drug dealers.”).

created as the Community Improvement Agency in 1968, is currently charged with revitalizing the underinvested areas of New Orleans.⁶¹

1. The Community Improvement Agency in and for the City of New Orleans

In 1968, the Louisiana legislature took the first step toward combating abandonment and blight by enacting the New Orleans Community Improvement Act (NOCIA).⁶² By enacting NOCIA, the legislature finally gave New Orleans the help it needed.⁶³ The legislature acknowledged that areas in New Orleans had “become slum and blighted” and recognized that the problem would continue to impose onerous municipal burdens by decreasing the tax base and tax revenues.⁶⁴ The legislature highlighted that some areas were beyond remedy and could not be dealt with effectively through the regulatory processes and under the existing laws so additional resources were needed and were provided by NOCIA.⁶⁵ Shortly after the passage of NOCIA, the City of New Orleans approved the creation of the Community Improvement Agency in and for the City of New Orleans (the Agency).⁶⁶

NOCIA set up the Agency as a political corporation of the state.⁶⁷ The Mayor of New Orleans was to appoint seven citizens as commissioners of the Agency to serve for five-year terms.⁶⁸ The

61. *About New Orleans Redevelopment Authority*, NEW ORLEANS REDEVELOPMENT AUTH., <http://www.noraworks.org/about/history> (last visited Apr. 5, 2019); see Act No. 170, 1968 La. Acts 355. The Community Improvement Agency was reconstituted as the New Orleans Redevelopment Authority in 1994. See Act No. 135, 1994 La. Acts 1048; *About New Orleans Redevelopment Authority*, *supra*.

62. Act No. 170, 1968 La. Acts 355.

63. See C.M. Hargroder, *Urban Renewal Bills Approved*, TIMES-PICAYUNE, May 28, 1968, at 1 (“The city of New Orleans needs this bill. We’re asking you to give us the right to help ourselves.” (quoting Councilman Maurice Landrieu)). Prior to NOCIA, the New Orleans City Council had voted in favor of urban renewal legislation for three years in a row. *Id.*

64. Act No. 170, 1968 La. Acts 355, 356. Moreover, the legislature declared that the prevention and elimination of blight is a matter of public policy and that the salvage and renewal of blighted areas would support public health, safety, and welfare. *Id.*

65. *Id.*; see also Paul Atkinson, *Job Is Biggest Since Bienville’s—Barnett*, TIMES-PICAYUNE, Sept. 5, 1968, at 1 (acknowledging that “New Orleans will be a squalid slum within 25 years” if nothing is done (quoting Walter M. Barnett, chairman of the mayor’s advisory committee on community improvement)).

66. See *Council Passes Urban Renewal*, TIMES-PICAYUNE, Sept. 6, 1968, at 1.

67. Act No. 170, 1968 La. Acts 355, 358.

68. *Id.*; see *Hope of Agency Meeting Voiced*, TIMES-PICAYUNE, Sept. 28, 1968, at 1. The terms for the initial commissioners were initially set to allow for a staggered board. See Act No. 170, 1968 La. Acts 355, 359; *Hope of Agency Meeting Voiced*, *supra*.

commissioners were then to select a chairman, a vice-chairman, and other officers deemed necessary.⁶⁹ NOCIA gave the Agency the autonomy to employ an executive director and other employees that were needed.⁷⁰ This structure permitted the Agency some independence from the city.

NOCIA authorized the Agency “[t]o undertake and carry out community improvement projects and related activities in accordance with the city’s comprehensive plan.”⁷¹ To do so, NOCIA empowered the Agency with the authority to “repair . . . services, privileges, works, streets, roads, public utilities or other facilities” and to construct “streets, utilities, parks, playgrounds, and other public improvements.”⁷² Under NOCIA, the Agency, within a community improvement area,⁷³ could acquire any real property “by purchase, lease, option, gift, grant, bequest, device or by the exercise of the power of expropriation” and could “hold, improve, clear, or prepare for redevelopment any such property.”⁷⁴ Additionally, NOCIA enabled the Agency to hold property exempt from taxes.⁷⁵ NOCIA also provided the Agency with disposition powers. NOCIA required the properties to be sold at fair value, but the Agency could “sell, lease or otherwise transfer real property” for any use.⁷⁶ The Agency could also do so “subject to . . . covenants, conditions and restrictions, including covenants running with the land” as deemed “necessary or desirable to assist in preventing the development or spread of future slums or blighted areas.”⁷⁷ NOCIA obligated purchasers or lessees to devote the property to the uses of the community improvement plan.⁷⁸ Overall, NOCIA initially invigorated the Agency with broad powers of acquisition and disposition in an attempt to enable the Agency to efficiently prevent and eliminate blight and effectively salvage and renew blighted areas.

69. Act No. 170, 1968 La. Acts 355, 360.

70. *Id.*

71. *Id.* at 361.

72. *Id.*

73. As defined by NOCIA, a community improvement area is “a slum area or a blighted area or a combination thereof which the local governing body designates as appropriate for a community improvement project.” *Id.* at 380.

74. *Id.* at 361-62. The Act also expressly endorsed any public body to “[d]edicate, sell, donate, grant, devise, convey, or lease” any property to the Agency in furtherance of a community improvement project. *Id.* at 375.

75. *Id.* at 374.

76. *Id.* at 368.

77. *Id.*

78. *Id.*

However, most of the Agency's authority was limited to operating within the scope of a community improvement plan or project within a community improvement area.⁷⁹ Before the Agency could act and adopt a community improvement plan, the City of New Orleans had to determine an area "to be a slum or a blighted area" and establish it as a community improvement area.⁸⁰ Additionally, each plan and project needed to be approved by the electorate.⁸¹ Essentially, three hurdles—the establishment of a community improvement area, the adoption of a community improvement plan or project, and the subsequent approval of the plan or project—stood between the Agency and its ability to act. These hurdles, viewed as necessary to protect local prerogatives,⁸² likewise constrained the Agency's powers and limited its effectiveness. While in operation, the Agency never established a community improvement area.⁸³

In its early years, the Agency implemented small projects in the Lower Ninth Ward, Central City, Desire-Florida, and Tulane/Gravier.⁸⁴ The Agency "repaired streets, improved sewage systems, and planted trees along the boulevards."⁸⁵ Later, the Agency implemented projects in the Irish Channel and Broadmoor neighborhoods.⁸⁶

The legislature eventually amended NOCIA to provide the Agency with an additional method of property acquisition.⁸⁷ Under the amended NOCIA, the Agency could acquire by any means any individual property declared "blighted" by the Department of Safety

79. See *id.* at 367-68 (limiting to acquisition "for or in connection with a community improvement plan or project" and allowing only limited acquisition and demolition in a community improvement area prior to approval of a community improvement plan).

80. *Id.* at 364; see also *Hope of Agency Meeting Voiced*, *supra* note 68 (detailing all the steps in establishing a plan or project).

81. Act No. 170, 1968 La. Acts 355, 366. However, the legislature later amended the Act to require the Mayor's approval of each plan and project instead of the electorate. Act No. 968, 2003 La. Acts 3067.

82. *Hope of Agency Meeting Voiced*, *supra* note 68 (noting that projects will be "locally conceived and carried out").

83. See David A. Marcello, *Housing Redevelopment Strategies in the Wake of Katrina and Anti-Kelo Constitutional Amendments: Mapping a Path Through the Landscape of Disaster*, 53 LOY. L. REV. 763, 773 n.49 (2007). It appears that the only time the city designated a community improvement area was in 2007 when the city declared the Pontilly neighborhood a community improvement area and adopted a community improvement plan to govern its development. Minutes of the Regular Meeting of the Council of the City of New Orleans, No. R-07-604 (Dec. 6, 2007).

84. *About New Orleans Redevelopment Authority*, *supra* note 61.

85. *Id.*

86. *Id.* Additionally, the Agency worked with the city to develop affordable housing with funding from the Department of Housing and Urban Development (HUD). *Id.*

87. See Act No. 155, 1984 La. Acts 356.

and Permits.⁸⁸ This expanded the operative scope of the Agency by allowing it to operate more freely outside a designated community improvement area and acquire any “blighted” property throughout New Orleans.⁸⁹

However, this newfound power was also limited in three ways. First, the amended NOCIA imposed an additional step upon the Agency’s acquisition of blighted property. Prior to pursuing acquisition, the Agency needed to offer technical and financial assistance to the owner to enable rehabilitation.⁹⁰ Second, the amendment restrained the Agency when acquiring a property by expropriation. To expropriate property, the city first needed to declare the property “blighted” and then approve the acquisition itself.⁹¹ Third, the amendment limited the Agency’s ability to acquire property based on its own ability to dispose of the property. The Agency was restricted from acquiring property in which it did not already have an executed contract with a prospective purchaser for the immediate transfer of the property to the purchaser upon the Agency’s acquisition.⁹² The expanded ability to operate outside a community improvement area allowed the Agency to directly impact the entirety of New Orleans, while the limitations placed on that ability maintained the protections of local prerogatives.

2. NORA Before Hurricane Katrina

In 1994, the legislature changed the name of the Agency to the New Orleans Redevelopment Authority.⁹³ This amendment eliminated the restriction requiring a contractually obligated purchaser prior to

88. *Id.* The Act provided the procedure through which properties were certified as blighted. *Id.*

89. *See* Joan Kent, *Group Has Designs on Dilapidation*, TIMES-PICAYUNE, Aug. 19, 1984, at F-F-11a.

90. Act No. 155, 1984 La. Acts 356; Kent, *supra* note 89.

91. Act No. 155, 1984 La. Acts 356, 357. Although the required city approval limited the Agency’s ability to acquire blighted properties, the limitation was more procedural, and the Agency successfully obtained approval to acquire property using expropriation. *See, e.g.*, Minutes of the Regular Meeting of the Council of the City of New Orleans, Nos. R-94-338, R-94-339 (Mar. 17, 1994); Minutes of the Regular Meeting of the Council of the City of New Orleans, Nos. R-94-62, R-94-63 (Jan. 20, 1994). *But see also* Warner, *supra* note 60 (exhibiting the problem the procedural limitation creates because the city bureaucracy moves at “a snail’s pace”).

92. Act No. 155, 1984 La. Acts 356, 358. However, to facilitate immediate transfer and development, the Act instructed the Agency to immediately work to secure a purchaser for all properties upon receiving city approval to acquire them. *Id.*

93. Act No. 135, 1994 La. Acts 1048, 1049.

NORA's acquisition of blighted property.⁹⁴ The amendment also added that property expropriated under the Act "shall confer title to the property . . . free of all mortgages, liens, privileges, taxes, and encumbrances" provided that proper notice of the expropriation was sent to all parties with a legally protected interest in the property.⁹⁵ These changes allowed NORA more flexibility in acquiring property and enabled NORA to make expropriated property more attractive by allowing NORA to transfer the property unburdened.

After the 1994 amendment, NORA narrowed its focus to neighborhood revitalization.⁹⁶ Due to limited staff and funding, NORA consolidated its resources and centered its efforts on acquiring blighted properties throughout New Orleans and returning them to productive use.⁹⁷ Although the 1984 and 1994 amendments expanded NORA's powers, NORA was still unable to operate at full force because of the necessity of a blight declaration and the snail's pace of city government operation.⁹⁸ For example, after turnover of city officials in May of 1994, no abandoned property was designated blighted until March of 1995.⁹⁹ The cumbersome review process only allowed for properties to deteriorate further and become more expensive to rehabilitate.¹⁰⁰ A critic of NORA acknowledged that "to some extent it was shackled by chains not of its own making" but still characterized NORA's history by its "shocking inertia and waste."¹⁰¹

According to the 2000 census, NORA faced almost 27,000 vacant properties, which amounted to 12.5% of the total housing units in New

94. *Id.*

95. *Id.* at 1060; see Coleman Warner, *City Hopes to Make Homes Out of Abandoned Houses*, TIMES-PICAYUNE, Feb. 11, 1995, at B1. Additionally, NORA was obligated to apply the proceeds from the expropriation against all outstanding encumbrances. Act No. 135, 1994 La. Acts 1048, 1060. The prior owner remained responsible for any taxes, charges imposed pursuant to Louisiana Revised Statute section 33:1236, and paying or improvement assessments left outstanding after the expropriation proceeds were applied. *Id.* at 1061; see Warner, *supra*.

96. *About New Orleans Redevelopment Authority*, *supra* note 61.

97. *Id.*

98. See Warner, *supra* note 60.

99. See *id.*; Minutes of the Regular Meeting of the Council of the City of New Orleans, No. R-95-122 (Mar. 2, 1995).

100. See Warner, *supra* note 60.

101. Coleman Warner, *Agency Reforms Too Few, Too Late*, TIMES-PICAYUNE, Feb. 19, 1996, at A1 ("[NORA's] performance in the past decade has been a woeful disappointment . . ."); see also Frank Donze, *Unlikely Agency Key to Rebirth*, TIMES-PICAYUNE, Oct. 11, 2006, at A1 ([T]he agency has never been put to its full use, limited both by the lack of vision of New Orleans' elected leadership and a lack of money.").

Orleans.¹⁰² At that time, New Orleans had a population of almost 485,000 inhabiting a city built for 650,000 people.¹⁰³ Although the significant stock of abandoned and blighted property provided NORA with ample property to convert, NORA's powers continued to go largely unused.¹⁰⁴ For example, from 2000 to 2005, NORA only filed between 113 and 268 expropriation suits annually, which translated to even lower acquisition and redevelopment numbers.¹⁰⁵

In 2004, the legislature again acknowledged the severity of blight in New Orleans and codified NOCIA in the Louisiana Revised Statutes.¹⁰⁶ At that time, the legislature made no significant changes.¹⁰⁷ However, around the same time, in an attempt to identify new strategies to combat abandoned property, the city enlisted the National Vacant Properties Campaign (NVPC) for guidance.¹⁰⁸ The NVPC issued a report stating that the city's revitalization efforts were severely impeded by the "maze of inconsistent programs guided by contradictory policies applied to differing definitions of applicable property that can be acquired or transferred in fundamentally different ways for radically different purposes."¹⁰⁹ The NVPC asserted that the sheer complexity of the programs operated as a major barrier to a functioning market and made reformation recommendations.¹¹⁰ But,

102. See U.S. CENSUS BUREAU, LOUISIANA: 2000, SUMMARY POPULATION AND HOUSING CHARACTERISTICS 172 tbl.11 (2002) [hereinafter 2000 SUMMARY CHARACTERISTICS].

103. 2010 UNIT COUNTS, *supra* note 58, at 23 tbl.8; Frank S. Alexander, *Louisiana Land Reform in the Storms' Aftermath*, 53 LOY. L. REV. 727, 731 (2007).

104. See Donze, *supra* note 101 ("Entrusted with broad powers to breathe life into blighted neighborhoods, the underfinanced agency has failed to live up to its promise since it was created 40 years ago.").

105. BUREAU OF GOVERNMENTAL RESEARCH, *supra* note 1, at 1 n.2.

106. See LA. REV. STAT. §§ 33:4720.51-.71 (2018) (enacted by Act No. 349, 2004 La. Acts 1480). Between 1994 and 2004, the legislature revisited NORA's statutory authority five times but only made minor changes. See Act No. 968, 2003 La. Acts 3067 (allowing the mayor to approve redevelopment plans and projects and editing disposition of property); Act No. 266, 2003 La. Acts 1466 (editing the "blighted" certification procedure); Act No. 101, 1997 La. Acts 207 (editing blighted property removal); Act No. 375, 1995 La. Acts 1059 (editing the definition of "blighted property"); Act No. 30, 1995 La. Acts 238 (repealing Act No. 65, 1994 La. Acts 862).

107. The legislature presumably compiled all previous amendments to the Act without ensuring that a cohesive codification resulted.

108. JAMES H. CARR ET AL., HEALTH POLICY INST., IN THE WAKE OF KATRINA: THE CONTINUING SAGA OF HOUSING AND REBUILDING IN NEW ORLEANS 3 (2008), <http://jointcenter.org/sites/default/files/InTheWakeofKatrina.pdf>.

109. NAT'L VACANT PROPS. CAMPAIGN, NEW ORLEANS TECHNICAL ASSESSMENT AND ASSISTANCE REPORT: RECOMMENDED ACTIONS TO FACILITATE PREVENTION, ACQUISITION, AND DISPOSITION OF NEW ORLEANS' BLIGHTED, ABANDONED, AND TAX ADJUDICATED PROPERTIES 2 (2005).

110. *Id.*

before the city or NORA could act on the advice provided by the NVPC, on August 29, 2005, Hurricane Katrina made landfall on the Gulf Coast, striking New Orleans and leaving eighty percent of the city underwater.¹¹¹ Three weeks later, Hurricane Rita made landfall.¹¹²

The storms were followed by a stark decrease in population because of the number of displaced residents. The population fell to 230,172 residents, according to estimates in July of 2006.¹¹³ This was a decrease of 254,502 people—over half of the city’s population, according to the 2000 census data.¹¹⁴ Additionally, the damage to housing was significant. In New Orleans, 134,000 housing units, which amounted to seventy percent of all occupied units, suffered damage from the storms and the flooding that ensued.¹¹⁵ The population decrease and the extensive housing damage compounded the amount of abandoned property in New Orleans.

3. The Reaction to Katrina

After Hurricanes Katrina and Rita devastated New Orleans and exacerbated the amount of abandoned property in the city, every level of government attempted to provide relief. Likewise, every level of government made mistakes. Eventually, after the failures of the Federal Emergency Management Agency (FEMA),¹¹⁶ the Louisiana Recovery Authority (LRA) and its Road Home Program,¹¹⁷ and the city

111. See CARR ET AL., *supra* note 108, at 1; see also Bill Walsh et al., ‘Will New Orleans Ever Be the Same?’, *TIMES-PICAYUNE*, Sept. 1, 2005, at 7 (“The floodwaters swamping New Orleans ultimately will recede, but Hurricane Katrina’s destructive legacy is certain to be felt for years to come as the city contemplates rebuilding after one of the worst natural disasters in the nation’s history.”).

112. CARR ET AL., *supra* note 108, at 1.

113. Allison Plyer, *Facts for Features: Katrina Impact*, DATA CTR. (Aug. 26, 2016), <https://www.datacenterresearch.org/data-resources/katrina/facts-for-impact/>.

114. *Id.* Other estimates as of September 1, 2006, show a greater population loss, reducing the population to 190,400. U.S. DEP’T OF HOUS. & URBAN DEV., COMPREHENSIVE HOUSING MARKET ANALYSIS: NEW ORLEANS-METairie-Kenner, LOUISIANA 4 (2006), https://www.huduser.gov/portal/publications/pdf/CMAR_NewOrleansLA_07.pdf.

115. Plyer, *supra* note 113.

116. See CARR ET AL., *supra* note 108, at 7-8 (discussing the shortcomings of FEMA).

117. See *id.* at 8, 10-13 (discussing the shortcomings of Road Home). Road Home, under the authority of the LRA and funded by HUD, helped many New Orleans residents get back into their homes after Hurricanes Katrina and Rita. *Program Overview*, ROAD HOME, <https://www.road2la.org/> (last visited Apr. 5, 2019). Road Home was designed to help Louisiana homeowners restore their homes. *Id.* Under Road Home, eligible homeowners either committed to stay and rebuild and received a grant or agreed to sell their home to the state. THE ROAD HOME, THE ROAD HOME HOMEOWNER PROGRAM POLICIES: VERSION 10.1, at 17-18 (2017), <https://www.road2la.org/HAP/Docs/Compliance/HAP%20Policies%20--%20V10.1%2011.22.2017.pdf>.

government, NORA was viewed as the tool that could be used to implement citywide recovery initiatives.¹¹⁸

In the year following Katrina and Rita, the legislature did little to help NORA respond to increased levels of blight and abandonment and, indirectly, potentially crippled its expropriation power.¹¹⁹ In reaction to *Kelo v. City of New London*,¹²⁰ the Louisiana legislature proposed two amendments to the Louisiana Constitution to protect the property rights of individuals, which thereafter received voter approval.¹²¹ The amendment to article I section 4(B) prevented the expropriation of property “(a) for predominant use by any private person or entity; or (b) for transfer of ownership to any private person or entity.”¹²² Additionally, the amendment limited public purpose to public use and the “removal of a threat to public health or safety caused by the existing use or disuse of the property.”¹²³ The amendment expressly prohibited using “economic development, enhancement of tax revenue, or any incidental benefit to the public” to justify expropriation.¹²⁴ The addition of section 4(H) added a requirement to subsequent transfers of expropriated property.¹²⁵ Under section 4(H), before expropriated property not held for thirty years could be sold, the

118. See Donze, *supra* note 101 (describing NORA as “the sleeping giant of city government” and noting that the revamped authority will likely take “a lead role in the resurrection of a city still blanketed with desolation more than a year after Hurricane Katrina”); Gordon Russell, *Agency Takes Charge of Abandoned Homes*, TIMES-PICAYUNE, Dec. 12, 2006, at B3; *About New Orleans Redevelopment Authority*, *supra* note 61; see also David Hammer, *Feds Give \$30 Million to Blight Agency*, TIMES-PICAYUNE, Jan. 15, 2010, at B1 (noting NORA had previously been “largely ignored,” but “took on new significance after the storm”).

119. See Act No. 859, 2006 La. Acts 2974 (adding LA. CONST. art. I, § 4(H) to impose limitations on transferring expropriated property); Act No. 851, 2006 La. Acts 2957 (amending LA. CONST. art. I, § 4(B) to impose limitations on the use of expropriation); Act No. 666, 2006 La. Acts 2500 (adding commissioners, allowing for community-based organizations to request an area be designated for a community improvement plan, and adding revenue bond capabilities).

120. 545 U.S. 469 (2005).

121. Alexander, *supra* note 103, at 739-40; see Marcello, *supra* note 83, at 773. In *Kelo*, the United States Supreme Court permitted the use of eminent domain to acquire properties to be used for an economic redevelopment project. 545 U.S. 469. The Court held that economic redevelopment served a “public purpose,” which satisfied the “public use” requirement of eminent domain. *Id.* at 477-78.

122. Act No. 851, 2006 La. Acts 2957, 2958.

123. *Id.*; BUREAU OF GOVERNMENTAL RESEARCH, MENDING THE URBAN FABRIC: BLIGHT IN NEW ORLEANS, PART II: PROCEDURES FOR SUCCESSFUL REDEVELOPMENT 9-10 (2008), https://www.bgr.org/wp-content/uploads/2017/07/BGR_blight_report_2.pdf.

124. Act No. 851, 2006 La. Acts 2957.

125. See Act No. 859, 2006 La. Acts 2974.

property first needed to be offered back to the original owner or his heir.¹²⁶ This left NORA's powers of expropriation in question.¹²⁷

Although NORA was potentially hindered from expropriating property, around the same time, the city designated NORA as the one-stop shop to handle the disposition of all abandoned property.¹²⁸ The city tasked NORA with the disposition of tax-adjudicated properties and former Road Home properties and with effecting the Lot Next Door ordinance.¹²⁹ This gave NORA an influx of abandoned and blighted properties and expanded its ability to impact the city. Prior to the city's decision to better utilize NORA, the underfunded, understaffed, and overlooked authority was still only seizing and selling roughly 300 properties per year.¹³⁰

Recognizing that NORA needed help, the legislature provided additional methods of acquisition and strengthened NORA's ability to dispose of properties. In 2007, the legislature provided NORA with the ability to initiate an expedited quiet title and foreclosure action to property it held.¹³¹ This not only allowed NORA to clean up ownership issues on property it held but allowed NORA to do so in batches by filing a single petition for multiple properties.¹³² The following year, the legislature permitted NORA to receive adjudicated properties from the city and to purchase properties at tax sales.¹³³ To accomplish this, the legislature modified NORA's authority to initiate an expedited quiet title and foreclosure action to cover not only property it held but also property in which it had acquired an interest by tax sale and property formerly adjudicated to the city.¹³⁴ Additionally, the

126. *Id.*

127. Alexander, *supra* note 103, at 740; *see also* Marcello, *supra* note 83, at 773 ("NORA's use of its expropriation powers must not conflict with [the] new property rights guaranteed . . ."). These questions were later resolved. *See infra* notes 139-143 and accompanying text.

128. Russell, *supra* note 118.

129. *About New Orleans Redevelopment Authority*, *supra* note 61; *see* Russell, *supra* note 118.

130. Russell, *supra* note 118.

131. *See* Act No. 256, 2007 La. Acts 1633.

132. *Id.*

133. Act No. 791, 2008 La. Acts 2995.

134. *Id.* The authority to purchase properties at tax sales was expressly added in 2010. *See* Act No. 1030, 2010 La. Acts 3630. The authority to purchase adjudicated properties was expressly provided in 2012. *See* Act No. 196, 2012 La. Acts 1579. The newly added section 33:4720.58.1 clarified both NORA's ability to acquire adjudicated properties and NORA's ability to purchase properties at tax sales. LA. REV. STAT. § 33:4720.58.1 (2018) (enacted by Act No. 196, 2012 La. Acts 1579).

legislature expressly allowed NORA to purchase property at code enforcement proceedings.¹³⁵

With those additions, NORA's statutory ability to acquire property grew. The only thing holding NORA back was the 2006 Louisiana constitutional amendments that limited NORA's expropriation powers. The legislature attempted to counteract and clarify its actions. In an attempt to force NORA's expropriation of blighted property into a "public purpose," the legislature modified the definition of "blighted property" to mirror the amendments.¹³⁶ The legislature also extended NORA's power to acquire "blighted property" to include "abandoned property."¹³⁷ Additionally, the legislature removed the requirement that NORA receive authorization to acquire blighted property and expressly declared that NORA may acquire blighted and abandoned property pursuant to a delegation of authority by the city.¹³⁸

Definitive clarification as to NORA's expropriation power was provided by a test case filed by NORA and another constitutional amendment.¹³⁹ First, in *New Orleans Redevelopment Authority v. Burgess*, the Louisiana Fourth Circuit Court of Appeal authorized an expropriation of blighted property by NORA.¹⁴⁰ The court asserted that article I section 4(B)(2)(c) unambiguously provides that expropriation of blighted property is a public purpose and clarified that the proscriptions provided by sections 4(B)(1)(a)-(b) "merely prevents expropriations initiated with the goal of transferring private property to a specific recipient."¹⁴¹ Second, because the Louisiana Fourth Circuit

135. Act No. 791, 2008 La. Acts 2995.

136. Compare *id.* at 2996 (adding "use or disuse" and "a threat to public health and safety" to considerations of determining blight), with Act No. 851, 2006 La. Acts 2957, 2958 ("The removal of a threat to public health or safety caused by the existing use or disuse of the property.").

137. Act No. 791, 2008 La. Acts 2995. The legislature defined "abandoned property" as "property that is vacant or not lawfully occupied." *Id.* at 2998. Additionally, the legislature created a rebuttable presumption that property deemed uninhabitable because of its "physical condition or use or disuse" and for which taxes are delinquent for three or more years is presumed to be abandoned. *Id.*

138. *Id.* at 2997-98 ("[T]he authority may, pursuant to delegation of authority by the City of New Orleans, acquire blighted or abandoned property by a declaration of taking . . .").

139. John A. Lovett, *Tragedy or Triumph in Post-Katrina New Orleans? Reflections on Possession, Dispossession, Demographic Change, and Affordable Housing*, 23 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 289, 290-91 (2015).

140. 2008-1020, p. 19 (La. App. 4 Cir. 7/8/09); 16 So. 3d 569, 583.

141. *Id.* at pp. 19-21; 16 So. 3d at 583-84 (emphasis omitted) ("This property has not been taken for the predominant use of a private party nor for the purpose of transferring the property to a private person. It has been taken for the public purpose of removing a threat to

did not provide clarity to section 4(H), the legislature enacted another amendment to do so in 2010.¹⁴² The amendment provided the final clarification of NORA's expropriation power by expressly adding an exception to subsequent transfers of expropriated property, which mirrored the language of section 4(B)(2)(c).¹⁴³

Clarification came at a time when the city needed NORA most. As Mayor Mitch Landrieu stated, "[I]n 2010, New Orleans had the worst blight problem in America and no strategy to deal with it."¹⁴⁴ According to the 2010 census, NORA faced almost 48,000 vacant properties, which amounted to twenty-five percent of the total housing units in New Orleans.¹⁴⁵ Shortly after taking office, Mayor Mitch Landrieu announced an ambitious and aggressive blight reduction strategy.¹⁴⁶ Because of the unprecedented amount of vacant, abandoned, and blighted property, New Orleans needed NORA to operate at full steam.

In 2010, NORA received federal backing by way of the Neighborhood Stabilization Program (NSP), amounting to nearly thirty million dollars in federal stimulus money.¹⁴⁷ Now, with federal

the public health or safety."'). The court did not address or clarify section 4(H) because the case did not present a justiciable controversy on the issue. *Id.* at pp. 22-23; 16 So. 3d at 584-85. However, the court did note:

[I]t would be nonsensical to read these amendments to allow a city its statutory authority to expropriate from someone who allowed their property to become blighted, to allow tax liens to exist and not pay those tax liens, to then cancel those tax liens and then offer the property back to that person to put back into commerce when it is that person's neglect of the property that caused it to be blighted in the first instance.

Id. at p. 18; 16 So. 3d at 582 (quoting the trial judge from the bench).

142. See Act No. 1052, 2010 La. Acts 3753 (amending LA. CONST. art. I, § 4(H)).

143. *Id.* (adding an exception "for the removal of a threat to public health or safety caused by the existing use or disuse of the property").

144. Press Release, City of New Orleans, City Surpasses Blight Reduction Milestone of 10,000 Units by 2014 (Jan. 9, 2014) (quoting Mayor Mitch Landrieu), <https://www.nola.gov/mayor/press-releases/2014/20140109-blight/>.

145. U.S. CENSUS BUREAU, LOUISIANA: 2010, SUMMARY POPULATION AND HOUSING CHARACTERISTICS 223 tbl.11 (2012) [hereinafter 2010 SUMMARY CHARACTERISTICS]; see also ALLISON PLYER & ELAINE ORTIZ, GREATER NEW ORLEANS COMM. DATA CTR., BENCHMARKS FOR BLIGHT: HOW MUCH BLIGHT DOES NEW ORLEANS HAVE? 1 (2012), https://gnocdc.s3.amazonaws.com/reports/GNOCDC_BenchmarksForBlight_March2012.pdf (noting United States Postal Service data from September 2010 that reflected 43,755 addresses as blighted homes or empty lots and another 9356 addresses as vacant but habitable).

146. Press Release, City of New Orleans, *supra* note 144.

147. Hammer, *supra* note 118. Louisiana agencies received grants through the initial round of NSP funding, but that money could not be directed towards blight caused by hurricane damage. *Id.* After successful lobbying, the second round of NSP funding allowed for communities to apply for grant money to help with homes damaged by natural disasters. *Id.*

funding, NORA was projected to be able to overcome past hurdles, “kick-start recovery in neighborhoods that are hanging in the balance,” and maybe finally and effectively combat blight.¹⁴⁸ Prior to the NSP funding, NORA was “still reliant on the state and city to funnel federal recovery dollars its way,” and funding was often promised but then subsequently tied up by red tape.¹⁴⁹ The NSP funding provided NORA with the direct, untethered funds it needed to act.

Since receiving the NSP funding, NORA appeared to have found some footing. The funding “transformed the development capacity of the agency.”¹⁵⁰ NORA dispersed the funds for the construction of nearly 470 units.¹⁵¹ Additionally, between 2010 and 2013, NORA sold 811 Road Home properties through the Lot Next Door Program, and another 798 were made available to purchase at auction.¹⁵² NORA also revitalized about 300,000 square feet of commercial real estate.¹⁵³

Today, New Orleans as a whole shows signs of recovery,¹⁵⁴ but this is not entirely attributable to NORA’s efforts. The sustained reduction of blight is “attributable to a strong economy and ongoing population growth complemented by the focused efforts of city agencies to bring properties into compliance.”¹⁵⁵ The population growth after Katrina was the driving force behind the blight reduction that was ultimately achieved.¹⁵⁶ Additionally, the city streamlined and strengthened the code enforcement process, which brought more owners into compliance.¹⁵⁷ Although the population growth and the

148. *Id.* (noting that the hurdle of construction costs often exceeding the appraised value of homes discouraging redevelopment will now be offset and that governmental delays will no longer be an issue).

149. *Id.*; see also David Hammer, *NORA Is Finally Making Housing Progress*, NOLA.COM (July 30, 2012), http://www.nola.com/politics/index.ssf/2012/07/nora_is_finally_making_housing.html (commenting that “[Mayor] Nagin openly vied with NORA for control over recovery dollars and development strategy and even taunted the agency by withholding approval for crucial financing”).

150. Hammer, *supra* note 149 (quoting NORA Executive Director Jeff Hebert).

151. CITY OF NEW ORLEANS, BLIGHT REDUCTION REPORT 15 (2014), https://www.nola.gov/performance-and-accountability/blight-report_web/.

152. *Id.*

153. *Id.* at 19.

154. See Press Release, City of New Orleans, *supra* note 144 (publicizing the city’s successful completion of its goal to reduce the blight count in New Orleans by 10,000 units); PLYER & ORTIZ, *supra* note 145, at 1 (presenting estimates that show the number of blighted homes and empty lots had fallen from 43,755 in September 2010 to 35,700 in March 2012).

155. PLYER & ORTIZ, *supra* note 145, at 1.

156. See *id.* (noting that the growth in occupied addresses between 2010 and 2011 mirrored the estimated growth in population).

157. See Press Release, City of New Orleans, *supra* note 144.

city's aggressive approach to combating blight were welcomed forces of blight reduction after Katrina, these forces were a direction reaction to the storm and may soon plateau. High levels of vacant, abandoned, and blighted property were a problem prior to Katrina and as population growth stagnates,¹⁵⁸ New Orleans will need NORA to step up and serve as the catalyst to return properties back to commerce.

B. NORA's Current Capacity: What Works and What Does Not

NORA is a public agency but does operate with its own independent staff under the direction of a board of commissioners and an executive director.¹⁵⁹ While NORA could benefit from a higher degree of autonomy and independence from the city, it currently enjoys more than it did in the past.

NORA is statutorily authorized to acquire property using several means and to manage and dispose of acquired property. Further, NORA is afforded certain benefits not available to the local government or individuals. Within the operation of a community improvement area,¹⁶⁰ NORA has the broad authority to purchase, expropriate, and receive any property.¹⁶¹ Outside the operation of a community improvement area, NORA may purchase, expropriate, and receive any *blighted* property.¹⁶² Additionally, NORA may purchase adjudicated properties from the government,¹⁶³ purchase properties at tax sales and code enforcement proceedings,¹⁶⁴ and expropriate abandoned property.¹⁶⁵

158. See Jeff Adelson, *For the 1st Time Since Hurricane Katrina, Census Stats Show a Shrinking New Orleans*, NEW ORLEANS ADVOC. (Apr. 18, 2019), https://www.theadvocate.com/new_orleans/news/article_82df8c6c-6171-11e9-aaa1-736cd6d86ac3.html (“More than a decade of uninterrupted growth in New Orleans’ population that accompanied the recovery from Hurricane Katrina has ended . . .”).

159. LA. REV. STAT. § 33:4720.55 (2018).

160. *Id.* A community improvement area is now defined as “a slum area or a blighted area or a combination thereof or an area in which functionally obsolescent facilities are located which the local governing body designates as appropriate for a community improvement project.” *Id.* § 33:4720.71(9).

161. *Id.* § 33:4720.58(A) (empowering NORA to “acquire by purchase, lease, option, gift, grant, bequest, device, or by the exercise of the power of expropriation any real property”).

162. *Id.* § 33:4720.59(A) (empowering NORA to “acquire by purchase, gift, bequest, expropriation, negotiation, or otherwise any blighted property”).

163. *Id.* § 33:4720.58.1.

164. *Id.* §§ 33:4720.56, 33:4720.58.1.

165. *Id.* § 33:4720.59.

After acquisition, NORA has broad authority to manage and maintain property acquired and is enabled to contract with third parties to do so.¹⁶⁶ Additionally, NORA holds property tax-exempt.¹⁶⁷

Once NORA has acquired property within a community improvement area, NORA can transfer that property for any use conforming to the community improvement plan.¹⁶⁸ Additionally, NORA may transfer those properties subject to covenants, conditions, and restrictions and may restrict subsequent transfers prior to completion of agreed upon improvements.¹⁶⁹ This allows NORA to dictate future use of the property and guarantee redevelopment of transferred properties. The only constraints placed on the transfer of those properties are the encouragement to transfer them “as rapidly as feasible” and the requirement to transfer them at fair value, but these constraints provide allowances limiting their effect.¹⁷⁰

Additionally, NORA may file an expedited quiet title and foreclosure action for all property it holds,¹⁷¹ allowing NORA to solidify its ownership and later convey insurable and marketable title. NORA is also afforded with means to wipe property clean of its debts,¹⁷² which makes the property more attractive to third parties. With these broad grants of authority, NORA is equipped to dispose of vacant, abandoned, and blighted property.

Although NORA has the ability to act outside of a community improvement area, its broadest powers lie within that designation. However, because the city has only once declared a community improvement area and because NORA may act outside a designated

166. *Id.* § 33:4720.56.

167. *Id.* § 33:4720.64.

168. *Id.* § 33:4720.60(A)(1) (empowering NORA to “sell, lease, or otherwise transfer real property . . . acquired by it . . . for residential, recreational, commercial, industrial, or other uses or for public use”). For property acquired outside a community improvement area, NORA may generally dispose of the property. *See id.* § 33:4720.59(A) (providing NORA with “the power to . . . dispose of said property”). While section 33:4720.58.1 does not expressly address disposal of acquired adjudicated properties, section 33:4720.56 grants the power of general disposal. *See id.* §§ 33:4720.56, 33:4720.58.1.

169. *Id.* § 33:4720.60(A)(1).

170. *See id.* §§ 33:4720.60(A)(3), 33:4720.60(C) (requiring transfers at fair value and encouraging rapid transfers). *But see id.* § 33:4720.60(A) (allowing flexibility in determining fair value and granting authority the ability to maintain property pending transfer).

171. *See id.* § 33:4720.60.1.

172. *See id.* § 33:4720.59(E)(3) (providing that expropriated property is conveyed “free of all mortgages, liens, privileges, taxes, and encumbrances”); *id.* § 33:4720.60.1 (providing that a judgment from a quiet title and foreclosure action extinguishes all liens against the property); *see also id.* § 33:4720.58.1(E) (“The state and any political subdivision with liens on the property may . . . cancel such liens . . .”).

area, the powers within have remained largely untested and unaltered. The statutes granting NORA power outside of community improvement areas largely focus on expropriation of blighted property, which has been expanded, tested, and clarified. While general authority to acquire blighted and abandoned property has been expanded and the authority to acquire adjudicated properties has been added, NORA does not utilize this authority to its full capacity, thereby limiting its impact.

IV. NORA AS A LAND BANK

NORA is equipped, statutorily speaking, to operate as a land bank and to combat the problems associated with abandoned property in New Orleans. NORA's statutory capability to acquire, manage, and dispose of property is similar to that of a land bank. Like land banks, NORA may acquire properties through tax foreclosure proceedings,¹⁷³ discretionary transfers of publicly owned property,¹⁷⁴ voluntary transfers of privately owned property,¹⁷⁵ and purchases on the private market.¹⁷⁶ NORA may also manage and dispose of property it acquires.¹⁷⁷ Although NORA, under its current statutory authority, may convert vacant, abandoned, and blighted property, it could benefit from clarification and expansion of its powers.

First, the community improvement area designation should be eliminated because it could potentially limit NORA's ability to acquire property. As the statutes currently read, NORA may acquire any property within a community improvement area and may acquire any blighted property throughout the city, which implies a limitation on NORA's ability to acquire non-blighted property *outside* a community

173. *See id.* §§ 33:4720.56(23), 33:4720.58.1(F). NORA's ability to acquire property at tax sales is limited to placing a bid at the tax sale, but its bid is given priority. *Id.* § 33:4720.58.1(F).

174. Within a community improvement area, political subdivisions may transfer any publicly owned property to NORA using any means. *See id.* § 33:4720.58(A). Outside a community improvement area, political subdivisions may transfer any publicly owned blighted property to NORA. *See id.* § 33:4720.59(A). Additionally, NORA may purchase adjudicated properties from any political subdivision. *Id.* § 33:4720.58.1(A)-(D).

175. Within a community improvement area, NORA may receive any property. *See id.* § 33:4720.58(A). Outside a community improvement area, NORA may receive any blighted property. *See id.* § 33:4720.59(A).

176. NORA may purchase any property within a community improvement area and may acquire any blighted property outside the designation. *See id.* §§ 33:4720.58(A), 33:4720.59(A).

177. *See id.* §§ 33:4720.56, 33:4720.57, 33:4720.59-60.1.

improvement area.¹⁷⁸ Because NORA has focused its efforts on blighted property, this implied limitation has not prevented NORA from acquiring property. To maximize NORA's ability to acquire vacant and abandoned property outside of these designated areas, the community improvement area designation should be eliminated.

Second, NORA's ability to acquire tax adjudicated properties should be expanded. Acquisition through tax foreclosure is the most common method of acquisition for land banks, and the conversion of tax-delinquent properties provides an instant impact to the community by generating tax revenue.¹⁷⁹ Currently, NORA may place a prioritized bid for a property at tax sale and may purchase properties subsequent to adjudication.¹⁸⁰ Additionally, NORA is empowered to file an expedited quiet title and foreclosure action and is able to include multiple properties in a single action.¹⁸¹ To maximize NORA's ability to acquire tax-delinquent properties, the current provision should be expanded to allow for NORA to automatically receive title to properties that are not sold for the statutory minimum at tax sale. This would allow for NORA to acquire properties that would otherwise be adjudicated to the city when NORA is in a better position than the city to dispose of those properties.

Unlike most land banks, NORA is empowered with the ability to acquire property through expropriation.¹⁸² Because of this additional power, NORA technically has a leg up on land banks and is better situated to acquire blighted and abandoned property. Additionally, after *Burgess* and the 2010 constitutional amendment, NORA's power to expropriate blighted property and to subsequently transfer that property knows no bounds.¹⁸³ Expropriation is a powerful tool for NORA to have and therefore should be retained and utilized, but it should be used with reservation and only when needed.

NORA could also benefit from a reevaluation of its focus. When initially conceived, the Agency was to salvage and renew blighted areas. Currently, NORA's mission is to be "a catalyst for the

178. See *id.* §§ 33:4720.58(A), 33:4720.59(A).

179. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 12, at 2.

180. LA. REV. STAT. § 33:4720.58.1.

181. *Id.* § 33:4720.60.1. Converting tax sales into a judicial process would eliminate the need for a quiet title action but would require constitutional and statutory amendments. BUREAU OF GOVERNMENTAL RESEARCH, *supra* note 123, at 9.

182. LA. REV. STAT. § 33:4720.58 (property within a community improvement area); *id.* § 33:4720.59 (blighted and abandoned property); see *supra* note 24.

183. See *supra* notes 139-143 and accompanying text.

revitalization of the city, partnering in affordable and equitable strategic developments that celebrate the city's neighborhoods and honor its traditions."¹⁸⁴ NORA focuses on creating affordable housing, revitalizing commercial corridors, and maintaining vacant properties. However, if NORA would reprioritize its objectives, it could then accomplish its goals through land banking. The creation of affordable housing, lower density residential areas through green-spacing, and increased redevelopment are all side effects of land banking. NORA should switch its focus to the conversion of vacant and abandoned properties, which can then be used to accomplish its current goals.

V. CONCLUSION

NORA claims to function as a land bank.¹⁸⁵ NORA states that it manages "a large portfolio of vacant properties across the city," "utilizes local labor to keep properties maintained, and explores creative ways to use these properties to revitalize neighborhoods."¹⁸⁶ NORA's powers have grown over the years and allow it to function as a land bank, though it was only after the Road Home properties were given to NORA that NORA started to truly function as such. While NORA does engage in land banking operations, it is not as effective as it could be as a full-fledged land bank.¹⁸⁷

Because abandonment and blight have long been an issue in New Orleans and because the effect of population growth and citywide efforts after Katrina will plateau, New Orleans needs a working land bank. While NORA is currently in the best position to take on the role of New Orleans' land bank, its current capacity has limitations. To overcome those limitations, expansion of its current statutory authority is required. Then NORA may effectively and efficiently convert vacant, abandoned, tax-delinquent, and blighted property into productive use.

184. *About New Orleans Redevelopment Authority*, *supra* note 61.

185. *Id.* ("NORA also functions as the City's landbank, managing a large portfolio of vacant properties across the city.").

186. *Id.*

187. In 2010, New Orleans had almost 48,000 vacant properties. 2010 SUMMARY CHARACTERISTICS, *supra* note 145, at 223 tbl.11. Since then, NORA has acquired and disposed of less than 5000 properties. *NORA Sold Properties*, CITY NEW ORLEANS, <https://data.nola.gov/Housing-Land-Use-and-Blight/NORA-Sold-Properties/hpm5-48nj> (last updated Jan. 22, 2019). Additionally, since 2011, NORA has sold property at a decreasing rate. *Id.*