

RULES AND PROCEDURES
OF
BUFFALO ERIE NIAGARA LAND IMPROVEMENT CORPORATION

These Rules and Procedures are intended to be consistent with and shall be construed in accordance with the Laws of the State of New York. The Corporation shall operate in accordance with these Rules and Procedures and the Laws of the State of New York, the Bylaws of the Corporation, an Intermunicipal Agreement signed the County of Erie, the City of Buffalo, the City of Tonawanda, and the City of Lackawanna. These Rules and Procedures shall be reviewed by the Board annually and from time to time as deemed necessary by the Board.

I. Corporate Governance

A. Directors

1. Composition of Board of Directors. [IMA § 4.02, By-laws Art. IV § 3]

Subject to the amendment of the Intermunicipal Agreement and By-Laws of the Corporation, the Board of Directors shall be constituted of eleven directors, as follows:

1. The Commissioner of Administration and Finance, Policy and Urban Affairs for the City of Buffalo
2. The Executive Director of Strategic Planning of the City of Buffalo
3. The Commissioner of Permit and Inspection Services of the City of Buffalo
4. The Corporation Counsel of the City of Buffalo
5. The General Manager of the Buffalo Sewer Authority
6. The Commissioner of Environment and Planning of the County of Erie
7. The Director of Real Property Services of the County of Erie
8. The County Attorney of Erie County
9. The City Assessor of the City of Lackawanna
10. The City Treasurer of the City of Tonawanda
11. The Western New York Regional Director of the Empire State Development Corporation

2. Fiduciary Duty.

The members of the Board are under a fiduciary duty to conduct the activities and affairs of the Corporation in the best interests of the Corporation, including the safekeeping and use of all Corporation monies and assets. The members of the Board shall discharge their duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances. [IMA § 4.11]

3. No Compensation, Reimbursement for Expenses.

Board members shall serve without compensation. The Board may reimburse any member for expenses actually incurred in the performance of duties on behalf of the Corporation.

[§1605(g)]

4. Required Attendance at Meetings.

In the event that at any time after the first three meetings of the Board, any Director shall have failed to attend at least two-thirds of all meetings conducted within the prior twelve months, he or she may, subject to necessary revisions to the Intergovernmental Agreement, the By-Laws and the Certificate of Incorporation, be removed by not less than a majority of the remaining members of the Board, and he or she shall not be re-appointed to the Board except upon unanimous vote of the other members then serving.

[§1605(e) and Article IV, §5 of the By-Laws.]

5. Action of the Board.

(a) A majority of the members of the Board, not including vacancies, shall constitute a quorum for the conduct of business. All actions of the Board shall be approved by the affirmative vote of a majority of the members of the Board present and voting; provided, however, no action of the Board shall be authorized on the following matters unless approved by a majority of the total Board membership:

- (1) adoption or revision of by-laws and other rules, regulations, policies and procedures for conduct of the Corporation's business;
- (2) hiring or firing of any employee or contractor of the Corporation. This function may, by majority vote of the total Board membership, be delegated to a specified officer or committee of the Corporation, under such terms and conditions, and to the extent, that the Board may specify;
- (3) the incurring of debt;

- (4) adoption or amendment of the annual budget; and
- (5) acquisition, sale, lease, encumbrance, or alienation of real property, improvements, or personal property.

[§1605(i)]

6. Meetings.

The Board shall meet in regular session according to a schedule adopted by the Board, and also shall meet in special session as conveyed by the Chairman or upon written notice signed by a majority of the Members. [§1605(h)]. In March each year the Board shall conduct an annual meeting for the election of officers and such other business as may come before the meeting.

7. Notice of Meeting.

At least seven days before every regular meeting, the Executive Director or Chair, or an officer designated by the Chair, shall send by mail or e-mail notice of and proposed (non-binding) agenda for the meeting.

8. Performance Objectives. [IMA § 8.06]

Each Fiscal Year, the executive director, or other individual designated by the Board, shall prepare, for review and approval by the Board, objectives for the Corporation's performance.

B. Officers and Staff

1. Officers.

At the annual meeting each year, the members of the Board of Directors shall select annually from among themselves a Chairman, a Vice-Chairman, a Treasurer, and such other offices as the Board may determine, and shall establish their duties as may be regulated by rules adopted by the Board.

A vacancy among such officers, for any reason, shall be filled by majority vote of the members. A director elected or appointed to fill a vacancy shall hold office until the next annual meeting at which the election of officers is in the regular order of business.

2. Counsel and Staff. [By-Laws Art. V § 3. See § 1606.]

The Corporation may employ a secretary, an executive director, its own counsel and legal staff, and such technical experts, and such other agents and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation and benefits of such persons. The Corporation may also enter into contracts and agreements with municipalities for staffing services to be provided to the Corporation by municipalities or agencies or departments thereof, or for the Corporation to provide such staffing services to municipalities or agencies or departments thereof.

3. Executive Director. [IMA § 4.13]

The Board may select and retain an executive director. An executive director selected and retained by the Board shall administer the Corporation in accordance with the budget adopted by the Board, general policy guidelines established by the Board, the Land Bank Act, other applicable governmental procedures and policies, and this Agreement. The executive director shall be responsible for the day-to-day operations of the Corporation, the control, management, and oversight of the Corporation's functions, and supervision of all Corporation employees. All terms and conditions of the executive director's employment shall be specified in a written contract between the executive director and the Corporation. The executive director shall serve at the pleasure of the Board. The Board may delegate to the executive director any powers or duties it considers proper, subject to the constraints of Land Bank Act, and under such terms, conditions and extent that the Board may specify.

4. Employees. [IMA § 4.14]

The Corporation may employ or otherwise contract for the services of any staff deemed necessary to carry out the duties and responsibilities of the Corporation. Such staff may be employed as employees of the Corporation, or the services of such staff may be retained pursuant to contracts with any Party or other public or private entities.

C. Fiscal Year

The Fiscal year of the Corporation shall start January 1 and expire December 31.

D. Compliance with Open Meetings Law and Freedom of Information Law. [See § 1612]

The Board and the Corporation shall comply with the provisions of the New York Open Meetings Law and the New York Freedom of Information Law. The Freedom of Information Policy and Open Meetings Policy are attached hereto.

E. Code of Ethics and Conflict of Interest Policy.

Subject to the provisions of section 1614 of the Land Bank Act, the Corporation establishes the Code of Ethics and Conflict of Interest Policy attached hereto.

F. Procurement Policy.

The Corporation establishes the Procurement Policy attached hereto.

G. Whistleblower Policy.

POLICY:

The Corporation encourages employees, volunteers and other related to the organization to report any violation of policy, procedure, or ethics; illegal activity; or other misconduct by employees, volunteers, or others related to the organization. No person who in good faith reports a violation shall suffer harassment, retaliation or adverse employment consequence. An employee, board member, or volunteer who retaliates against someone who has reported a violation in good faith is subject to discipline up to and including termination of employment.

PROCEDURE:

Reports can be directly made to the executive director, Chairman or Vice-Chairman or any special committee constituted by the Board to receive and process such confidential information. To the

extent that the activity or misconduct involves the executive director, the report should be made directly to the Chairman or Vice-Chairman.

Violations or suspected violations may be submitted on a confidential basis by the complainant or may be submitted anonymously. Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation.

The recipient of a complaint will notify the sender and acknowledge receipt of the reported violation or misconduct within five business days. All reports will be promptly investigated and appropriate corrective action will be taken if warranted by the investigation.

II. Acquisition and Disposition of Property

1. Compliance with Municipal Building Codes, Zoning Laws, and Land Use Controls and Intergovernmental Agreements. [IMA § 7.02; By-Laws Art. VI § 2]

The Corporation shall be subject to all applicable city, town and village building codes, zoning laws and land use controls in its use and disposition of real property owned by the Corporation, and to the terms and conditions of any applicable Intergovernmental Cooperative Agreement. The Mayor and the Executive Director of Strategic Planning for the City of Buffalo shall be responsible for confirming that any proposed land banking activity within the City of Buffalo is in accordance with said codes, zoning laws, and land use controls of the City of Buffalo and shall provide written confirmation of such accordance prior to any land banking activity taking place.

2. Consultation with Municipalities. [IMA § 7.03; By-Laws Art. VI § 3]

The Corporation shall actively consult with Erie County and the cities, towns and villages of Erie County in respect to the selection of properties to be acquired and policies, plans and procedures to the disposition of such properties.

3. Consent of Cities. [§ 1616; IMA § 7.04; By-Laws Art. VI § 4]

The Corporation shall at least thirty (30) days prior to the commencement of any tax lien foreclosure action, provide the municipalities a list of the liens to be foreclosed by the Corporation. Recognizing that the Cities of Buffalo, Lackawanna and Tonawanda, as well as the County, possess their own tax liens on real property within their respective territories, the Corporation will not foreclose on County tax liens or more generally exercise the powers granted by the Land Bank Act for acquisition of property at tax foreclosure sale within a City over the written objection of the Mayor of such City. The Corporation will not commence any tax lien foreclosure action without the City's prior written commitment to indemnify the Corporation for any costs/liabilities associated with said action should the Mayor of any City object any time after the commencement of the foreclosure proceeding.

4. Acquisition of Properties by the Corporation. [§ 1608; IMA § 7.05; By-Laws Art. VI § 5]

i) Acquisition of Properties

The Corporation may acquire real property or interests in real property by gift, devise, transfer, exchange, foreclosure, purchase or otherwise on the terms and conditions and in a manner so approved by the Board. The Corporation may acquire real property by purchase contracts, lease purchase agreements, installment sales contracts, land contracts and may accept transfers from municipalities upon such terms and conditions as agreed upon by the Corporation and the transferring municipality. The Corporation may bid on a property on which a FGU is foreclosing. The Corporation may accept a deed in lieu of foreclosure. The Corporation may acquire tax delinquent, tax foreclosed, vacant or abandoned real property from entities other than political subdivisions.

i) Identification of Properties by Municipalities

- a) Except as described herein, each municipality desiring the Corporation consider acquisition of vacant, abandoned, tax-delinquent or tax-foreclosed property shall provide to the Corporation a certified copy of a Resolution adopted by the municipality which includes the address and section, block and lot (S.B.L.) number of each property the municipality desires the Corporation acquire and lists the addresses in order of priority. The City of Buffalo, requesting BENLIC assign its bid rights or acquire properties in the City at the City's In Rem auction, does not have to provide an adopted Resolution including the address and SBL and ordering of properties described above; however, it shall provide the BENLIC Board of Directors a certified copy of the Resolution utilizing BENLIC to obtain title or assign its bid rights to properties, and also provide BENLIC a detailed list of properties on which the City desires BENLIC to tender preemptive bids prior to City of Buffalo in rem auctions to the BENLIC Board of Directors at a Board of Director's meeting.
- b) A municipality providing a Resolution including addresses, SBLs, and priority orderings of properties the municipality is desirous BENLIC acquire shall provide completed Structure Acquisition Applications or Vacant Lot Applications for each property listed in the Resolution. All such Applications shall accompany the Resolution. An Acquisition Application must exist for each property listed in such Resolution. To be considered by the Corporation for acquisition, the municipality should state whether it agrees in its Resolution to the terms and conditions of the Corporation's Pay-it-Forward policy as adopted and amended by the Board of Directors from time to time.
- c) Annually, the Corporation will send a letter to each of the municipalities in Erie County soliciting properties for acquisition at the proceeding year's Erie County in rem auction. The letter will notify the municipalities of an acquisition request deadline, provide them with copies of the Acquisition Applications, the Corporation's applicable Property Tax and Maintenance and Foreclosure Proceeds Distribution Policy, and Pay-it-Forward Policy.

- d) Recognizing that the Cities of Lackawanna and Tonawanda possess their own tax liens and conduct their own tax lien foreclosure proceedings and in rem auctions at varying times, those Cities, if desirous of BENLIC acquisition of properties or assignment of BENLIC bid rights, shall provide Resolutions adopted by their legislative bodies, as well as completed Acquisition Applications, to BENLIC Board of Directors at least 45 days prior to the scheduled auctions in order to be considered for acquisition by the Corporation. If not adopted prior to acquisition request Resolution, each City shall adopt via such Resolution the appropriate Property Tax and Maintenance and Foreclosure Proceeds Distribution Policy.
- e) In addition to annual submissions of properties to be acquired at Erie County in rem auction, any municipality or Foreclosing Governmental Unit may, upon a showing of extraordinary circumstances, send additional adopted Resolutions including Acquisition Applications to the Corporation identifying properties for acquisition, provided the Resolution is received by the Corporation at least 45 days prior to auction date.
- ii) Selection of Properties
 - a) The Corporation shall use selection criteria to evaluate the property submitted prior to the acquisition.
 - b) The Corporation will use the selection criteria and by a majority vote of the total Board membership, select properties for acquisition.
 - c) The submission of a request by a municipality shall not obligate the Corporation to select or take action with respect to the property.

 - iv) Manner of Acquisition
 - a) The Corporation may require as a precondition to foreclosure that the requesting town or village or city agree to submit a bid for the property at the foreclosure sale.
 - b) Once the Corporation, by a majority vote of the total Board membership, has officially selected properties for acquisition, the Corporation will work with the host municipality/FGU to specify the method by which the property will be acquired by the Corporation.
 - c) Such method shall be in a manner consistent with the federal, state and local laws, rules and regulations.

5. Redevelopment Plans. [IMA § 7.06; By-Laws Art. VI § 6]

Subject to the requirements of these Rules and Procedures, and after consultation with the specific municipalities affected, the Board of Directors may adopt redevelopment plans for properties held or to be disposed of by the Corporation within the respective territories of such municipalities which are consistent with the local land use plans of such municipalities.

6. Purchase of Tax Liens. [IMA § 5.02]

The Corporation may acquire liens relative to Tax Delinquent Property in accordance with Section 1616 of the Land Bank Act.

7. Execution of Legal Documents Relating to Real Property. [IMA § 5.03]

The terms of any contract or agreement concerning the sale, lease license, easement, encumbrance, or other alienation of any interest in Real Property, or improvements thereto, or personal property of the Corporation, shall be approved by the Board and executed in the name of the Land Bank by no less than two members of the Board of Directors

8. Civil Action to Protect Land Bank Real Property. [IMA § 5.04]

The Corporation may institute a civil action to prevent, restrain, or enjoin the waste of or unlawful removal of any real property held by the Corporation. The Corporation may also institute any civil action to protect, clear title to, determine the rights of parties to, remove liens from, or that are otherwise related to the Real Property of the Corporation.

9. Transfer of Interests in Real Property by Land Bank. [IMA § 5.05]

On terms and conditions, in a manner, and for an amount of consideration the Corporation considers proper, fair, and reasonable, the Corporation may convey, sell, transfer, exchange, lease as lessor, or otherwise dispose of real property or rights or interests in real property in which the Corporation holds a legal interest to any public or private person subject to the New York Public Authorities Law, and any other statutory requirements.

The Corporation shall determine and set forth in policies and procedures of the Board the general terms and conditions for consideration to be received by the Corporation for the transfer of real property and interests in real property, which consideration may take the form of monetary payments and secured financial obligations, covenants and conditions related to the present and future use of the property, contractual commitments of the transferee, and such other forms of consideration as are consistent with state and local law.

10. Structure of Conveyances. [IMA § 5.06]

Transactions shall be structured in a manner that permits the Corporation to enforce contractual agreements, real property covenants, and the provisions of any subordinate financing held by the

Corporation pertaining to development and use of the real property.

11. Disposition of Proceeds. [IMA § 5.07]

Any proceeds from the sale or transfer of real property by the Corporation shall be retained, expended, or transferred by the Corporation as determined by the Board in the best interests of the Corporation and in accordance with the Land Bank Act.

12. The Corporation shall maintain and make available for public review and inspection a complete inventory of all property received by the Corporation. Such inventory shall include: the location of the parcel; the purchase, if any, for each parcel received; the current value assigned to the property for purposes of real property taxation; the amount, if any, owed to the locality for real property taxation; the identity of the transferor; and any conditions or restrictions applicable to the property. [§ 1608(h)]

13. All parcels received by the Corporation shall be listed on the received inventory established within one week of acquisition and shall remain in such inventory for one week prior to disposition. [§ 1608(i)]

14. The Corporation shall hold in its own name, or in the name of a lawfully organized subsidiary, all real property acquired by the Corporation irrespective of the identity of the transferor of such property. [§ 1609(a)]

15. The Corporation shall maintain and make available for public review and inspection a complete inventory of all real property dispositions by the Corporation. Such inventory shall include a complete copy of the sales contract including all terms and conditions including, but not limited to, any form of compensation received by the Corporation or any other party which is not included within the sale price. [§ 1609(b): All property dispositions shall be listed on the property disposition inventory established pursuant to paragraph (b) of this section within one week of disposition. Such records shall remain available for public inspection in the property disposition inventory indefinitely. [§ 1609 (g)]]

16. Building and Housing Codes.

The Corporation shall maintain all Real Property held by the Corporation in accordance with applicable State laws and local codes.

III. Financial Controls Policies and Reporting

A. Land Bank Records. [IMA § 8.01]

The Corporation shall keep and maintain at the principal office of the Corporation all financial documents and records of the Corporation. All records of the Corporation subject to any claimed privilege shall

be made available to either Party, including the Erie County Comptroller. The financial records and documents shall be maintained until the termination of this Agreement and shall be delivered to any successor entity.

B. Financial Statements and Reports. [IMA § 8.02]

The Corporation shall cause to be prepared, at the Corporation's expense, audited financial statements (Management's Discussion and Analysis, Basic Financial Statements and Other Required Supplemental Information) on an annual basis. Such financial statements shall be prepared in accordance with generally accepted accounting principles and accompanied by a written opinion of an independent certified public accounting firm. The Corporation shall be subject to audit by the office of the state comptroller in accordance with Section 1603(h) of the Land Bank Act.

C. Annual Budget. [IMA § 8.04]

The executive director, or other individual designated by the Board, shall prepare annually a budget for the Corporation. The Board shall review and approve a budget for the Corporation immediately preceding each Fiscal Year.

D. Deposits and Investments. [IMA § 8.04]

The Corporation shall deposit and invest funds of the Corporation, not otherwise employed in carrying out the purposes of the Corporation, in accordance with the Corporation's Investment Policy consistent with laws and regulations regarding investment of Corporation funds.

E. Disbursements.

Disbursements of funds shall be in accordance with the adopted budget and with guidelines established by the Board. [IMA § 8.03, § 8.05]


F. Checks and Banking Accounts. [By-Laws Art. V § 4. See IMA § 9.03]

The Executive Director is authorized to issue and sign checks or otherwise authorize electronic payment to pay corporate obligations up to \$5,000.00 incurred in the ordinary course of business. The Executive Director, Chairman, Vice Chairman and Treasurer are authorized to issue and sign (two (2) signatures required) checks to pay corporate obligations greater than \$5,000.00. The Board of Directors may adopt such resolutions as may be appropriate to authorize one or more officers or the Executive Director to sign, without requiring any other signature, payroll checks and to authorize the officers to open accounts and to issue and sign checks without reference in such resolutions to the purposes of such accounts and checks all in accordance with the Corporation's Internal Control Policy.

G. Limitation on Political Activities.

The Corporation shall not spend any public funds on political activities. Subject to the foregoing, this section is not intended to prohibit the Corporation from engaging in activities authorized by applicable law.

H. Management of Funds. [IMA § 9.03]

The Board of Directors designates Lumsden & McCormick LLP, and any replacement firm of certified public accountants subsequently retained by the Corporation, as fiscal agent of the Corporation to manage sales proceeds, monetary contributions made by the Parties', and other Corporation funds. Standard accounting procedures shall be used in the management of Corporation accounts. 

I. Audit Committee.

The Board shall elect three of its members to serve as an audit committee. The Chairman and Treasurer shall not serve on the Audit Committee. The Audit Committee shall establish procedures for the engagement of an independent auditor to be appointed by the Board. The Audit Committee shall: (1) pre-approve all audit services provided by the independent auditor; (2) review and approve the Corporation's audited financial statements, associated management letter, report on internal controls and any other communications from the independent auditor; (3) meet with the independent auditor to discuss significant issues that may arise during the course of an audit; (4) in concert with the Erie County Comptroller, review the effectiveness of the Corporation's internal controls; and (5) at least annually review ethics and financial disclosure statement of all officers and employees.

J. Compliance with Public Authorities Law Article 9.

The Corporation shall comply with such requirements of Article 9 of the New York Public Authorities Law Article 9 as are applicable to land banks.