

HOUSE No. 4106

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to further clarify the Nantucket Islands land bank act regarding real property interests subject to the land bank act's transfer fee..

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

1 The Nantucket Islands Land Bank Act (being chapter 669 of the Acts of 1983, as
2 amended by chapter 407 of the Acts of 1984, by chapter 202 of the Acts of 1985, by chapter 666
3 of the Acts of 1987, by chapter 392 of the Acts of 1991, by chapter 309 of the Acts of 1994, by
4 chapter 370 of the Acts of 2002, and by chapter 130 of the Acts of 2006, referred to collectively
5 as the "Land Bank Act") is hereby amended as follows:

6 (a) The definition of "Real property interest" appearing in Section 1 of the Land Bank
7 Act shall be restated in its entirety to the following:

8 "Real property interest", any present or future legal or equitable interest in or to real
9 property, and any beneficial interest therein, including the interest of any beneficiary in a trust
10 which holds any legal or equitable interest in real property; the interest of a partner or member in
11 a partnership or limited liability company, the interest of a stockholder in a corporation, the
12 interest of a holder of an option to purchase real property, the interest of a buyer or seller under a
13 contract for purchase and sale of real property, and the transferable development rights created

under Massachusetts General Laws chapter 183A; but shall not include any interest which is limited to any of the following: the dominant estate in any easement or right of way; the right to enforce any restriction; any estate at will or at sufferance; any estate for years having a term of less than thirty years; any reversionary right, condition, or right of entry for condition broken; and the interest of a mortgagee or other secured party in any mortgage or security agreement.

(b) Section 10A of the Land Bank Act is hereby repealed in its entirety.

(c) The following sentence shall be inserted at the end of the preamble to Section 12 of the Land Bank Act: "Any otherwise exempt transfer shall not be

exempt in the event that such transfer (by itself or as part of a series of transfers) was made for the primary purpose of evading the fee imposed by Section 10."

(d) Section 12 (-i-) of the Land Bank Act shall be amended by deleting the portion thereof commencing with "provided, however, that such . . ." through the end of subsection (-i-), and the following shall be inserted in lieu thereof:

provided, however, that such transfer shall be exempt only in the event that (i) with respect to a corporation, the transferor retains an interest in the newly formed corporation which is equivalent to the interest the transferor held prior to the transfer, or (ii) with respect to a partnership or limited liability company, the transferor retains after such formation rights in capital interests and profit interests within such partnership or limited liability company which are equivalent to the interest the transferor held prior to the transfer.

(e) Section 12 (-j-) of the Land Bank Act shall be entirely restated as follows:

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

(f) Delete from Section 12 (-m-) of the Land Bank Act the words "The first" from the beginning of the subsection, and capitalize the word "an", which becomes the first word of the subsection.

(g) Add new subsection (-n-) to Section 12 of the Land Bank Act, as follows:

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

(h) Add new subsection (-d-) to Section 14 of the Land Bank Act, as follows:

(-d-) If the Commission has determined that a fee is due by asserting the application of the evasion of fee doctrine described in Section 12 of this Act, then the transferee shall have the

56 burden of demonstrating by clear and convincing evidence as determined by the Commission
57 that the transfer, or series of transfers, possessed both: (i) a valid, good faith business purpose
58 other than avoidance of the fee set forth in Section 10 of this Act and (ii) economic substance
59 apart from the asserted fee avoidance benefit. In all such cases the transferee shall also have the
60 burden of demonstrating by clear and convincing evidence as determined by the Commission
61 that the asserted non-fee-avoidance business purpose is commensurate with the amount of the fee
62 pursuant to Section 10 to be thereby avoided.