

SENATE No. 2123

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act establishing the Nantucket Community Housing Bank..

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

1 SECTION 1. For the purposes of this act, the words and phrases set forth in this section
2 shall have the following meanings:

3 "Community Housing", rental and home ownership housing units for use by those
4 residents of Nantucket earning 150 per cent or less of the median household income for
5 Nantucket county, as calculated and adjusted for household size annually by the federal
6 Department of Housing and Urban Development (HUD); this percentage of median income,
7 should economic conditions warrant a change, can be adjusted by a majority vote of the housing
8 bank commission.

9 "Eligible Applicants", non-profit and for-profit corporations and organizations,
10 individuals, and public entities.

11 "Housing Bank", the Nantucket Community Housing Bank, established by section 2.

12 "Housing Bank Commission", the Nantucket Community Housing Bank Commission,
13 established by section 3.

14 "Legal representative", with respect to any person, shall mean any other person acting
15 under a written power-of-attorney executed by that person, but any affidavit attesting to the true
16 and complete purchase price of real property, submitted to the housing bank commission under
17 section 9, may also be signed on behalf of that person by an attorney admitted to practice in the
18 commonwealth.

19 "Purchaser", the transferee, grantee or recipient of any real property interest.

20 "Purchase price", all consideration paid or transferred by or on behalf of a purchaser to a
21 seller or a seller's nominee, or for the seller's benefit, for the transfer of any real property interest,
22 including, but not limited to, all cash or other property paid or transferred by or on behalf of the
23 purchaser to discharge or reduce any obligation of the seller; the principal amount of all notes or
24 their equivalent, or other deferred payments, given or promised to be given by or on behalf of the
25 purchaser to the seller or the seller's nominee; the outstanding balance of all obligations of the
26 seller which are assumed by the purchaser or to which the real property interest transferred
27 remains subject after the transfer, determined at the time of transfer but excluding real estate
28 taxes or other municipal liens or assessments which are not overdue at the time of the transfer;
29 and the fair market value at the time of transfer of any other consideration or thing of value paid
30 or transferred by or on behalf of the purchaser, including, but not limited to, any property, goods
31 or services paid, transferred or rendered in exchange for the real property interest.

32 "Real property interest", any present or future legal or equitable interest in or to real
33 property, and any beneficial interest therein, including the interest of any beneficiary in a trust
34 which holds any legal or equitable interest in real property; the interest of a partner or member in
35 a partnership or limited liability company, the interest of a stockholder in a corporation, the

36 interest of a holder of an option to purchase real property, the interest of a buyer or seller under a
37 contract for purchase and sale of real property, and the transferable development rights created
38 under Massachusetts General Laws chapter 183A; but shall not include any interest which is
39 limited to any of the following: the dominant estate in any easement or right of way; the right to
40 enforce any restriction; any estate at will or at sufferance; any estate for years having a term of
41 less than thirty years; any reversionary right, condition, or right of entry for condition broken;
42 and the interest of a mortgagee or other secured party in any mortgage or security agreement.

43 "Seller", the transferor, grantor or immediate former owner of any real property interest.

44 "Time of transfer", of any real property interest shall mean, the time that the transfer is
45 legally effective between the parties to the transfer, and, with respect to a transfer evidenced by
46 an instrument recorded with the appropriate registry of deeds or filed with the assistant recorder
47 of the appropriate registry district, not later than the time of the recording or filing.

48 SECTION 2. There shall be a Nantucket Community Housing Bank, to be administered
49 by a housing bank commission established by section 3, for the purpose of providing funding for
50 community housing as set forth in section 5. The Housing Bank shall be a body politic and
51 corporate and a public instrumentality, and the exercise of the powers conferred upon the
52 Housing Bank by this act shall be considered to be the performance of an essential governmental
53 function.

54 SECTION 3. (a) The Nantucket Community Housing Bank shall be administered by
55 a housing bank commission consisting of five (5) members who are legal residents of Nantucket,
56 each person to be elected to a three (3) year term, in the same manner as other elected town
57 officials. The Nantucket board of selectmen shall appoint the initial five members to serve from

58 the effective date of this act until the first elections of the regular members at the town's regular
59 or special town election after the effective date of this act. The initial terms, which will be drawn
60 by lot by the initial five appointed members, shall be staggered so that two members are elected
61 each year, and in the third year, one member elected, such elections following the initial election.

62 (b) Vacancies: Should a vacancy occur during the term of any elected town member, the
63 housing bank commission and the board of selectmen shall jointly appoint an interim member to
64 serve until the next scheduled town election.

65 (c) Administration: Members shall serve without compensation. The initial appointed
66 members shall adopt temporary rules and regulations to the extent necessary to conduct business
67 until the regular members are elected. The housing bank commissions shall elect a chairman and
68 a vice chairman from among their regular members and shall elect a secretary and a treasurer
69 who may be the same person, and who need not be members of the housing bank commission.
70 The members of the housing bank commissions shall adopt, after holding a public hearing, rules
71 and regulations for conducting its internal affairs and procedural guidelines for carrying out its
72 responsibilities under this act.

73 (d) Quorum: A quorum for the Nantucket Community Housing Bank Commission shall
74 be three or more members. Decisions of the Housing Bank Commission

75 shall be by majority vote at a meeting where a quorum is present. The Housing

76 Bank Commission may make rules regarding attendance. The Housing Bank

77 Commission shall keep accurate records of its meetings and actions and shall file annual
78 reports that shall be distributed with the annual report of the Town of Nantucket. The Housing

79 Bank Commission shall be classified as a municipal agency for purposes of chapter 268A of the
80 General Laws, and be subject to the open meeting law (chapter 39, sections 23A, 23B and 23C of
81 the General laws).

82 SECTION 4A. The housing bank commission shall (a) provide funding as has been first
83 approved by an annual or special town meeting of the town of Nantucket, in the form of grants,
84 loans, loan guarantees, lines of credit, interest subsidies, rental assistance or any other means
85 determined to further the goals of the housing bank for eligible community housing activities
86 under section 5, (b) accept gifts of funds to further the purposes of the housing bank; (c) prepare
87 an annual budget, provided however no more than 5% of all funds received by the housing bank
88 during any fiscal year may be spent for administration purposes without approval by an annual or
89 special town meeting of the town of Nantucket, (d) hire staff and obtain professional services
90 that are necessary in order to perform its duties; (e) adopt regulations and procedures that it
91 considers necessary or appropriate, subject to this act, regarding the use and investment of its
92 funds and the keeping of records and accounts; (f) adopt procedures in the form of rules and
93 regulations that it considers necessary or appropriate setting forth its programmatic goals,
94 policies and recommendations to serve as standards for decisions to provide funding for
95 programs under section 5, provided however, such procedures shall not take effect until
96 approved by an annual or special town meeting of the town of Nantucket; and (g) enter into and
97 enforce contracts that it considers necessary to achieve the goals of this legislation.

98 SECTION 4B. The Town of Nantucket may appropriate money to be deposited in the
99 Nantucket Housing Fund as provided in said section 7A. The Town of Nantucket is hereby
100 further authorized to provide funds to repay any notes or bonds of the town issued pursuant to
101 this section and, when authorized by a two thirds vote of town meeting as defined in G.L.

102 Chapter 44. section. 1, to incur debt of the town for such purposes in accordance with the
103 provisions of G. L. Chapter 44, section 7(3).

104 SECTION 4C. The housing bank may issue bonds and notes to further the purposes of
105 the housing bank but only if the issuance of these bonds or notes has been approved by a two
106 thirds majority vote at a Nantucket town meeting. The proceeds of such bonds or notes may be
107 used to pay, in whole or in part, for the purposes set forth in section 4A of this act, reserves for
108 debt service and other expenses, to pay consulting appraisal advisory and legal fees and costs
109 incidental to the issuance and sale of such bonds and notes, to purchase, refund or renew bonds
110 or notes previously issued and to pay an other costs and expenses of the housings bank
111 commission necessary for the accomplishment of its purposes. Bonds or notes issued pursuant to
112 this act shall be authorized by the commission which shall have full power and authority to
113 determine the amount, form, terms, conditions, provisions for payment of interest and all other
114 details thereof and to provide for the sale and issuance at such price and in such manner as the
115 Commission shall determine subject only to any limitation set forth in this Act. Unless the town
116 of Nantucket shall have authorized by two-thirds vote of a town meeting the pledging of the full
117 faith and credit of the town or county of Nantucket to secure an issue of bonds or notes of the
118 housing bank, all bonds or notes issued hereunder shall be payable solely from the fees and other
119 revenues of the housing bank pledged to their payment and shall not be deemed a pledge of the
120 full faith and credit of the Town or County of Nantucket, the Commonwealth of Massachusetts
121 or any political subdivision thereof.

122 The Housing Bank Commission may enter into any agreements, including without
123 limitation a loan agreement and a trust agreement, necessary to effectuate and to secure any
124 bonds or notes issued by the housing bank. Such agreements may pledge or assign, in whole or

125 in part, the revenues and other money held or to be received by the housing bank. Such
126 agreements may contain such provisions for protecting and enforcing the rights, security and
127 remedies of the holders of such bonds or notes, including, without limiting the generality of the
128 foregoing, provisions defining defaults and providing for remedies in the event thereof which
129 may include the acceleration of maturities and covenants setting forth the duties of, and
130 limitations on, the housing bank in relation to the custody, safeguarding, investment and
131 application of money, the issuance of additional debt obligations, the use of any surplus proceeds
132 of the borrowing, including any investment earnings thereon, and establishment of special funds
133 and reserves.

134 The pledge of any such agreement shall be valid and binding and shall be deemed
135 continuously perfected for the purposes of the Uniform Commercial Code from the time when
136 the pledge is made; the revenues, money, rights and proceeds so pledged and then held or
137 thereafter acquired or received by the housing bank shall immediately be subject to the lien of
138 such pledge without any physical delivery or segregation thereof or further act; and the lien of
139 any such pledge shall be valid and binding against all parties having claims of any kind in tort,
140 contract or otherwise against the town or county, irrespective of whether such parties have notice
141 thereof. No document by which a pledge is created need be filed or recorded except in the
142 records of the housing bank and no filing need be made under the Uniform Commercial Code.

143 The trustee with respect to any such trust agreement entered into pursuant to this section
144 shall be a trust company or a bank having the powers of a trust company within the
145 commonwealth. Any such trust agreement may provide that any money received thereunder may
146 be held, deposited or invested by the trustee, notwithstanding the provisions of section 7A
147 pending the disbursement thereof, in any deposits or investments which are lawful for the funds

148 of savings banks and shall provide that any officer with whom or any bank or trust company with
149 which such money shall be deposited shall act as trustee of such money and shall hold and apply
150 the same for the purposes hereof and thereof, subject to such regulation or limitation as this act
151 or such trust agreement may provide.

152 It shall be lawful for any bank or trust company within the Commonwealth to act as
153 depository of the proceeds of bonds or notes, revenues or other money hereunder and to furnish
154 such indemnifying bonds or to pledge such security, if any, as may be required by the
155 Commission. Any trust agreement entered into pursuant to this section may set forth the rights
156 and remedies of the holders of any bonds or notes and of the trustee and may restrict the
157 individual rights of action by any such holders. In addition to the foregoing, any such trust
158 agreement may contain such other provisions as the Commission may deem reasonable and
159 proper. All expenses incurred in carrying out the provisions of such trust agreement may be
160 treated as part of the cost of operation of the housing bank and paid from the revenues or other
161 funds pledged or assigned to the payment of the principal of and the premium, if any, and
162 interest on the bonds or notes or from any other funds available to the housing bank. In addition
163 to other security provided herein or otherwise by law, bonds or notes issued under this section
164 may be secured, in whole or in part, by insurance or by letters or lines of credit or other credit
165 facilities issued to the housing bank by any bank, trust company or other financial institution,
166 within or without the Commonwealth, and the housing bank may pledge or assign any of its
167 revenues as security for the reimbursement by the housing bank to the issuers of such letters or
168 lines of credit, insurance or credit facilities of any payments made thereunder.

169 SECTION 4D. If at any time any principal or interest is due or about to come due on any
170 bonds or notes of the housing bank to secure which the full faith and credit of the town of

171 Nantucket or Nantucket county shall have been pledged and funds to pay the same are not
172 available, the Commission shall certify to the town treasurer and selectmen of the town or to the
173 county treasurer and county commissioners of the county, as appropriate, the amount required to
174 meet such obligations and the town treasurer or the county treasurer shall thereupon pay over to
175 the housing bank the amount so certified from any funds in the treasury. For the purpose of
176 providing or restoring to the treasury the sums so paid over to the housing bank, the town
177 treasurer, with the approval of the selectmen, is authorized to incur debt outside the town's debt
178 limit and issue notes therefore for a period not exceeding two years and to renew or refund the
179 same from time to time until the town shall have received from the housing bank sufficient funds
180 to repay such notes and the interest thereon in full. Whenever the town or the county shall have
181 been required to pay over any sums of money to the housing

182 bank under this section, the housing bank shall be precluded from issuing any grants or
183 purchasing, constructing or making improvements to land or housing, or issuing any of its bonds
184 or notes for purposes other than repaying the town, until the housing bank shall have repaid the
185 town in full for all sums paid to the housing bank hereunder, including interest on any notes
186 issued for such purpose, unless the town shall have appropriated sufficient funds for such
187 purpose at a town meeting.

188 SECTION 4E. Bonds and notes issued under the provisions of this act are hereby made
189 securities in which all public officers and public bodies of the Commonwealth and its political
190 subdivisions, all insurance companies, trust companies in their commercial departments, savings
191 banks, cooperative banks, banking associations, investment companies, executors,
192 administrators, trustees and other fiduciaries may properly and legally invest funds, including
193 capital in their control or belonging to them. Such bonds and notes are hereby made securities

194 that may properly and legally be deposited with and received by any state or municipal officer or
195 any agency or political subdivision of the Commonwealth for any purpose for which the deposit
196 of bonds or obligations of the Commonwealth is now or may hereafter be authorized by law.

197 SECTION 4F. Notwithstanding any of the provisions of this act or any recitals in any
198 bonds or notes issued under this act, all such bonds and notes shall be deemed to be investment
199 securities under the Uniform Commercial Code.

200 SECTION 4G. The Housing Bank's revenues and income will be used solely for the
201 furtherance of its public purposes and shall be exempt from taxation. The Housing Bank and all
202 its revenues, income and real and personal property used solely by the Housing Bank in
203 furtherance of its public purposes from the date of acquisition thereof, shall be exempt from
204 taxation and from betterments and special assessments and the Housing Bank shall not be
205 required to pay any tax, excise or assessment to or for the Commonwealth or any of its political
206 subdivisions. Bonds and notes issued by the Housing Bank, their transfer and the income
207 therefrom, including any profit made on the sale thereof, shall at all times be exempt from
208 taxation within the Commonwealth.

209 SECTION 4H. With authorization of an annual or special town meeting of the town of
210 Nantucket as provided for in section 4C of this Act, bonds and notes may be issued under this act
211 without obtaining the consent of any department, division, commission, board, bureau or agency
212 of the town or county of Nantucket, except that the full faith and credit of the town or county of
213 Nantucket shall not be pledged for the payment of such bonds or notes unless such pledge shall
214 have been authorized by a two-thirds vote as provided in this Act, and without any other
215 proceedings or the happening of any other conditions or things than those proceedings,

216 conditions or things which are specifically required therefore by this act. The validity of and
217 security for any bonds and notes issued by the housing bank shall not be affected by the
218 existence or nonexistence of any such consent or other proceedings, conditions or things.

219 SECTION 5. The Nantucket Community Housing Bank shall be a funding agency only,
220 but may acquire by purchase, lease or gift offices for its operation, and may enter into
221 leasebacks, mortgages or other loans for this purpose. Upon receiving applications from eligible
222 applicants in a competitive process which will include public notice of funding availability, and
223 in a form prescribed by the commission, and upon compliance with the provisions of section 4A
224 of this Act, the housing bank will provide funding for eligible community housing activities as
225 defined below, while respecting special Nantucket habitats and rural character. The housing bank
226 shall, wherever possible, give preference to (a) the reuse of existing buildings, and (b)
227 construction of new buildings on previously developed sites.

228 Eligible community housing activities for receipt of funding shall include, but not be
229 limited to, the following:

230 (a) Purchase and rehabilitation of existing structures for rental or home ownership;

231 (b) Construction of rental or home ownership housing and necessary on-site or off site
232 infrastructure, including mixed use development;

233 (c) Purchase of land, and any and all improvements including easements;

234 (d) Down payment assistance, grants and soft second loans;

235 (e) Rental assistance programs;

236 (f) Modernization and capital improvements of existing rental and ownership housing;

237 (g) Creation of apartments and other ancillary housing;

238 (h) Housing counseling, predevelopment costs and technical assistance associated with
239 creating community housing projects and programs; and

240 (i) Mixed -use development projects.

241 SECTION 6. All housing units created by funding from a housing bank under this act
242 shall be deed restricted in perpetuity for use as community housing as defined in section 1 of this
243 act, except in cases when the housing bank commission determines that a deed restriction is not
244 feasible, and except in cases when the housing bank commission makes a finding that such a
245 deed restriction would delay, prevent or otherwise defeat the purpose of developing and making
246 available to the public Community Housing.

247 SECTION 7A. The Housing Bank Commission shall meet its financial obligations by
248 drawing upon a fund to be set up as a revolving or sinking account of the housing bank
249 commission in the treasury of the Town of Nantucket. Deposits into the Nantucket Housing Fund
250 shall include (a) funds appropriated, borrowed or transferred to be deposited into the fund by
251 vote of the county commissioners of Nantucket county or of the town meeting; (b) voluntary
252 contributions of money and other liquid assets to the fund; and (c) revenues from fees imposed
253 upon the transfer of real property interests under section 9 occurring on Nantucket after the
254 effective date of this act as set forth in section 15. Grants or gifts of money or other assets to the
255 housing bank shall be subject to any restrictions or limitations imposed by the grantor or donor.
256 All expenses lawfully incurred by the Housing Bank Commission in carrying out this act shall be
257 evidenced by proper vouchers and shall be paid by the treasurer of the town of Nantucket only
258 upon submission of warrants duly approved by the housing bank commission. The housing bank

259 commission treasurer shall prudently invest available assets of the fund under the regulations and
260 procedures adopted by the housing bank commission under clause (f) of section 4A, and all
261 income from investments shall accrue to the fund.

262 SECTION 7B. The Housing Bank Commission is authorized to enter into one or more
263 agreements with the Nantucket Land Bank Commission established by chapter 669 as amended
264 of the acts and resolves of 1983 by which agreements the housing bank may delegate to the
265 Nantucket Land Bank Commission the administration and management of collection of the fee
266 described in section 9 of this act, including but not limited to the record keeping duties pursuant
267 to section 8 of this act, the receipt of money pursuant to section 9 of this act, the processing of
268 applications for exemptions pursuant to section 11 of this act or processing applications for
269 refunds pursuant to section 10 of this act, the imposition of interest or penalties pursuant to
270 section 12 of this act, and the sending of notices and conduct of hearings pursuant to section 13
271 of this act, and provide for compensation or reimbursement of costs incurred by such Nantucket
272 Land Bank Commission from funds so collected.

273 SECTION 8. The housing bank commission shall keep a full and accurate account of its
274 actions including a record of when, from or to whom, and on what account money has been paid
275 or received under this act. These records shall be subject to examination by the director of
276 accounts or the director's agent under section 45 of chapter 35 of the General Laws. There shall
277 be an annual audit conducted by a duly recognized accounting firm, and a copy of that audit shall
278 be distributed to the Board of Selectmen of the Town of Nantucket. However, schedules of
279 beneficiaries of trusts, lists of stockholders of corporations, lists of partners, partnership
280 agreements, tax returns, and other materials deemed by the Commission to be private to a
281 particular entity or individual, which are filed with the Commission for the purposes of

282 determining or fixing the amount of fee imposed by this Act for any transfer or for the purpose of
283 determining the existence of any exemption pursuant to this act shall not be public records for
284 the purposes of section 10 of chapter 66 of the General Laws.

285 SECTION 9. There is hereby imposed a fee equal to one per cent of the purchase price
286 upon the transfer of any interest in real property located within the Town of Nantucket. The fee
287 shall be the liability of the seller of the real property interest, and any agreement between the
288 purchaser and the seller or any other person with reference to the allocation of the responsibility
289 for bearing this fee shall not affect the liability of the seller. This fee shall be paid to the
290 Nantucket Community Housing Bank Commission or its designee. Fees shall be accompanied
291 by a copy of the deed or other instrument evidencing the transfer, if any, and an affidavit signed
292 under oath or under the pains and penalties of perjury by the seller or the seller's legal
293 representative, attesting to the true and complete purchase price and the basis, if any, upon which
294 the transfer is claimed to be exempt in whole or in part from the fee imposed. The Housing Bank
295 Commission, or its designee, shall promptly execute and issue a certificate stating that the
296 appropriate fee has been paid or that the transfer is exempt from the fee and stating the basis for
297 the exemption. The register of deeds for Nantucket county, and the assistant recorder for the
298 registry district of Nantucket county, shall not record or register, or receive or accept for
299 recording or registration, any deed, except a mortgage deed, for any real property interest located
300 in Nantucket unless this certificate is attached. Failure to comply with this requirement shall not
301 affect the validity of any instrument. The Housing Bank commission shall deposit all fees
302 received under this section with its treasurer as part of the fund established by section 7A. The
303 fee imposed under this section shall be due at the time of transfer of the real property interest.

304 SECTION 10. At any time within seven days after the issuance of the certificate of
305 payment of the fee imposed by section 9, the seller or the seller's legal representative may return
306 the certificate to the Housing Bank Commission or its designee for cancellation, together with an
307 affidavit signed under oath or under the pains and penalties of perjury that the transfer has not
308 been consummated. After receiving this certificate and affidavit, the housing bank commission
309 shall in due course return the fee to the seller or the seller's legal representative.

310 SECTION 11. The following transfers of real property interests shall be exempt from the
311 fee established by section 9. Except as otherwise provided, the seller shall have the burden of
312 proof that any transfer is exempt under this section and any otherwise exempt transfer shall not
313 be exempt in the event that such transfer (by itself or as part of a series of transfers) was made
314 for the primary purpose of evading the fee imposed by Section 9.

315 (-a-) Transfers to the government of the United States, the commonwealth, and any of
316 their instrumentalities, agencies or subdivisions, including but not limited to transfers to the
317 Town of Nantucket, the County of Nantucket, and/or the Nantucket Land Bank Commission
318 established pursuant to chapter 669 of the Acts of 1983 as amended or the Housing Bank
319 established by this Act.

320 (-b-) Transfers which, without additional consideration, confirm, correct, modify or
321 supplement a transfer previously made.

322 (-c-) Transfers made as gifts without consideration. In any proceeds to determine the
323 amount of any fee due hereunder, it shall be presumed that any transfer for consideration of less
324 than fair market value of the real property interests transferred was made as a gift without
325 consideration to the extent of the difference between the fair market value of the real property

326 interests transferred and the amount of consideration claimed by the seller to have been paid or
327 transferred, if the purchaser shall have been at the time of transfer the spouse, the lineal
328 descendant, or the lineal ancestor of the seller, by blood or adoption, and otherwise it shall be
329 presumed that consideration was paid in an amount equal to the fair market value of the real
330 property interests transferred, at the time of transfer.

331 (-d-) Transfer to the trustees of a trust in exchange for a beneficial interest received by the
332 seller in such trust; distributions by the trustees of a trust to the beneficiaries of such trust.

333 (-e-) Transfers by operation of law without actual consideration, including but not limited
334 to transfers occurring by virtue of the death or bankruptcy of the owner of a real property
335 interest.

336 (-f-) Transfers made in partition of land and improvements thereto, under chapter two
337 hundred and forty-one of the General Laws.

338 (-g-) Transfers to any charitable organization as defined in clause Third of section five of
339 chapter fifty-nine of the General Laws, or any religious organization, provided that the real
340 property interests so transferred will be held by the charitable or religious organization solely for
341 its public charitable or religious purposes.

342 (-h-) Transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee,
343 and transfers of the property subject to a mortgage to the mortgagee in consideration of the
344 forbearance of the mortgagee from foreclosing said mortgage.

345 (-i-) Transfers made to a corporation or partnership or limited liability company at the
346 time of its formation, pursuant to which transfer no gain or loss is recognized under the

347 provisions of section three hundred and fifty-one or seven hundred and twenty-one of the
348 Internal Revenue Code of 1986, as amended; provided, however, that such transfer shall be
349 exempt only in the event that (i) with respect to a corporation, the transferor retains an interest in
350 the newly formed corporation which is equivalent to the interest the transferor held prior to the
351 transfer, or (ii) with respect to a partnership or limited liability company, the transferor retains
352 after such formation rights in capital interests and profit interests within such partnership or
353 limited liability company which are equivalent to the interest the transferor held prior to the
354 transfer.

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

366 (-k-) Transfers consisting of the division of marital assets under the provisions of section
367 thirty-four of chapter two hundred and eight of the General Laws or other provisions of law.

368 (-l-) Transfers of property consisting in part of real property interests situated in
369 Nantucket County and in part of other property interests, to the extent that the property
370 transferred consists of property other than real property situated in Nantucket county; provided
371 that the purchaser shall furnish the Commission with such information as it shall require or
372 request in support of the claim of exemption and manner of allocation of the consideration for
373 such transfers.

374 (-m-) The first \$2 million of the sale price of any transfer or series of transfers of real
375 property interests in a single parcel. Said exemption may be adjusted for inflation as determined
376 tri-annually by vote of the majority of the Nantucket Community Housing Bank commission. For
377 purposes of this subsection, "inflation" shall mean the increases, if any, in the total of prices paid
378 for real property transfers year to year for real property within the Town of Nantucket.

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

383 SECTION 11A. To be consistent with the Nantucket Community Housing Bank Act,
384 the Nantucket Islands Land Bank Act (being chapter 669 of the Acts of 1983, as amended by
385 chapter 407 of the Acts of 1984, by chapter 202 of the Acts of 1985, by chapter 666 of the Acts
386 of 1987, by chapter 392 of the Acts of 1991, by chapter 309 of the Acts of 1994, by chapter 370
387 of the Acts of 2002, and by chapter 130 of the Acts of 2006, referred to collectively as the "Land
388 Bank Act") is hereby amended as follows:

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

391 "Real property interest", any present or future legal or equitable interest in or to real
392 property, and any beneficial interest therein, including the interest of any beneficiary in a trust
393 which holds any legal or equitable interest in real property; the interest of a partner or member in
394 a partnership or limited liability company, the interest of a stockholder in a corporation, the
395 interest of a holder of an option to purchase real property, the interest of a buyer or seller under a
396 contract for purchase and sale of real property, and the transferable development rights created
397 under Massachusetts General Laws chapter 183A; but shall not include any interest which is
398 limited to any of the following: the dominant estate in any easement or right of way; the right to
399 enforce any restriction; any estate at will or at sufferance; any estate for years having a term of
400 less than thirty years; any reversionary right, condition, or right of entry for condition broken;
401 and the interest of a mortgagee or other secured party in any mortgage or security agreement.

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

403 (c) The following sentence shall be inserted at the end of the preamble to Section 12 of
404 the Land Bank Act: "Any otherwise exempt transfer shall not be exempt in the event that such
405 transfer (by itself or as part of a series of transfers) was made for the primary purpose of evading
406 the fee imposed by Section 10."

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

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

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

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

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

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

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

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

437 (-d-) If the Commission has determined that a fee is due by asserting the application of
438 the evasion of fee doctrine described in Section 12 of this Act, then the transferee shall have the
439 burden of demonstrating by clear and convincing evidence as determined by the Commission
440 that the transfer, or series of transfers, possessed both: (i) a valid, good faith business purpose
441 other than avoidance of the fee set forth in Section 10 of this Act and (ii) economic substance
442 apart from the asserted fee avoidance benefit. In all such cases the transferee shall also have the
443 burden of demonstrating by clear and convincing evidence as determined by the Commission
444 that the asserted non-fee-avoidance business purpose is commensurate with the amount of the fee
445 pursuant to Section 10 to be thereby avoided.

446 SECTION 12. A seller who fails to pay all or any portion of the fee established by section
447 9 on or before the time when the fee is due shall be liable for the following additional payments
448 in addition to the fee:

449 (a) Interest. The seller shall pay interest on the unpaid amount of the fee to be calculated
450 from the time of transfer at a rate equal to prime rate at the time of transfer plus 1 per cent per
451 annum, adjusted each year in accordance with changes in prime rate.

452 (b) Penalties. Any person who, without fraud or willful intent to defeat or evade a fee
453 imposed by section 9, fails to pay all or a portion of the fee within 30 days after the time of

454 transfer, shall pay a penalty equal to five per cent of the outstanding fee as determined by the
455 housing bank commission for each month or portion of a month that the fee is not paid in full,
456 but in no event shall the amount of any penalty imposed under this paragraph exceed 25 per cent
457 of the unpaid fee due at the time of transfer. Whenever the housing bank commission determines
458 that all or a portion of a fee due under section 9 was unpaid due to fraud with intent to defeat or
459 evade the fee, a penalty equal to the amount of the fee as determined by the housing bank
460 commission shall be paid by the seller in addition to the fee.

461 SECTION 13A. (a) The Housing Bank Commission shall notify a seller by registered or
462 certified mail of any failure to discharge in full the amount of the fee due under section 9 and any
463 penalty or interest assessed. The Housing Bank Commission shall grant a hearing on the matter
464 of the imposition of the fee, or of any interest or penalty assessed, if a petition requesting a
465 hearing is received by the Housing Bank Commission within 30 days after the mailing of the
466 notice. If the Commission has determined that a fee is due by asserting the application of the
467 evasion of fee doctrine described in section 11 of this Act, then the seller shall have the burden
468 of demonstrating by clear and convincing evidence as determined by the Commission that the
469 transaction possessed both: (i) a valid, good faith business purposes other than avoidance of the
470 fee set forth in section 9 of this Act and (ii) economic substance apart from the asserted fee
471 avoidance benefit. In all such cases the seller shall also have the burden of demonstrating by
472 clear and convincing evidence as determined by the commission that the asserted non-fee-
473 avoidance business purpose is commensurate with the amount of the fee pursuant to section 9 to
474 be thereby avoided. The Housing Bank Commission shall notify the seller in writing by
475 registered or certified mail of its determination concerning the deficiency, penalty or interest
476 within 15 days after the hearing. Any party aggrieved by a determination of the Housing Bank

477 Commission concerning a deficiency, penalty or interest may, after payment of the deficiency,
478 appeal to the district or superior court within 3 months after the mailing of notification by the
479 Housing Bank Commission.

480 Upon the failure to timely petition for a hearing, or appeal to the court, within the time
481 limits established in this paragraph, the seller shall be bound by the terms of the notification,
482 assessment or determination, and shall be barred from contesting the fee or any interest and
483 penalty, as determined by the Housing Bank Commission. All decisions of these courts shall be
484 subject to appeal. Every notice to be given under this section by the Housing Bank Commission
485 shall be effective if mailed by certified or registered mail to the seller at any available legal
486 address of the seller, or at the address stated in a recorded or registered instrument by virtue of
487 which the seller holds any real property interest, the transfer of which gives rise to the fee which
488 is the subject of the notice; and, if no address is stated or if the transfer is not evidenced by an
489 instrument recorded or registered in the public records of Nantucket County, the notice shall be
490 effective when mailed to the seller in care of any person appearing of record to have had a fee
491 interest in the land at the time of the transfer, at the address of that person as set forth in an
492 instrument recorded or registered in Nantucket County.

493 (b) All fees, penalties and interest required to be paid under this act shall constitute a
494 personal debt of the seller and may be recovered in an action of contract or in any other
495 appropriate action, suit or proceeding brought by the housing bank commission subject to
496 chapter 260 of the General Laws.

497 (c) Sellers applying for an exemption under subsections (a) through (n) of section eleven
498 shall be required at the time of application for exemption to execute an agreement legally

499 binding on sellers and separately legally binding upon any Legal Representative of the sellers
500 (1) assuming complete liability for any fee, plus interest and penalties if any, waived on account
501 of an allowed exemption subsequently determined to have been invalid, and (2) submitting to the
502 jurisdiction of the trial court of the commonwealth sitting in Nantucket County. Fees, plus
503 interest and penalties if any, shall be calculated as of the date of the initial property transfer.
504 Execution of the above-described agreement shall not be required of any mortgagee, pledge,
505 purchaser or judgment creditor unless notice of the agreement has been recorded or filed by the
506 Housing Bank Commission.

507 The Housing Bank Commission, without waiving any of its rights, may direct a civil
508 action to be filed in the appropriate district or superior court division of the department of the
509 trial court sitting in the Nantucket county to enforce the agreement of the housing bank
510 commission under this section with respect to this liability or to subject any property of the
511 delinquent seller, or in which the delinquent seller has any legal or beneficial right, title or
512 interest, to the payment of this liability.

513 The Housing Bank Commission may issue a waiver or release of any agreement imposed
514 by this section. Such waiver or release shall be conclusive evidence that the agreement is
515 extinguished.

516 SECTION 13B. This act, being necessary for the welfare of the town and county of
517 Nantucket and its inhabitants, shall be liberally construed to effect its purposes.

518 SECTION 14. Any time after five years from the effective date of this act, the town may
519 dissolve the housing bank by vote of the majority of the town members at town meeting, but the
520 fee imposed by section 9 shall continue to be imposed until all funding commitments, including

521 repayment of any bonds or notes, have been paid in full, and the Nantucket housing bank shall
522 continue in existence during this time for the sole purpose of collecting and administering these
523 fees. Upon dissolution of the Nantucket housing bank, title to all funds and other properties held
524 by the housing bank shall vest in the town of Nantucket after provision is made for payment of
525 all bonds, notes and other obligations of the housing bank. The Nantucket housing bank
526 commission shall not submit an amendment of this act to the general court unless the amendment
527 has been approved by the affirmative vote of a majority of the voters at a town meeting.

528 SECTION 15. Acceptance of this act shall be by the affirmative vote of a majority of the
529 voters at any regular or special town election, or a state election, at which the question of
530 acceptance has been placed on the ballot. This act shall become effective on the date on which
531 acceptance by the town has been effected.