

SENATE NO. 1773

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 shall have the
2 following meanings:

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

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

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

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

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

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

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

31 "Real property interest", any present or future legal or equitable interest in or to real property, and any
32 beneficial interest therein, including the interest of any beneficiary in a trust which holds any legal or
33 equitable interest in real property; the interest of a partner or member in a partnership or limited
34 liability company, the interest of a stockholder in a corporation, the interest of a holder of an option to
35 purchase real property, the interest of a buyer or seller under a contract for purchase and sale of real
36 property, and the transferable development rights created under Massachusetts General Laws chapter
37 183A; but shall not include any interest which is limited to any of the following: the dominant estate
38 in any easement or right of way; the right to enforce any restriction; any estate at will or at sufferance;
39 any estate for years having a term of less than thirty years; any reversionary right, condition, or right of

40 entry for condition broken; and the interest of a mortgagee or other secured party in any mortgage or
41 security agreement.

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

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

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

52 SECTION 3.

53 (a) The Nantucket Community Housing Bank shall be administered by a housing bank
54 commission consisting of five (5) members who are legal residents of Nantucket, each person to be
55 elected to a three (3) year term, in the same manner as other elected town officials. The Nantucket
56 board of selectmen shall appoint the initial five members to serve from the effective date of this act
57 until the first elections of the regular members at the town's regular or special town election after the
58 effective date of this act. The initial terms, which will be drawn by lot by the initial five appointed
59 members, shall be staggered so that two members are elected each year, and in the third year, one
60 member elected, such elections following the initial election.

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

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

71 (d) Quorum: A quorum for the Nantucket Community Housing Bank Commission shall be three or
72 more members. Decisions of the Housing Bank Commission
73 shall be by majority vote at a meeting where a quorum is present. The Housing
74 Bank Commission may make rules regarding attendance. The Housing Bank
75 Commission shall keep accurate records of its meetings and actions and shall file annual reports that
76 shall be distributed with the annual report of the Town of Nantucket. The Housing Bank Commission
77 shall be classified as a municipal agency for purposes of chapter 268A of the General Laws, and be
78 subject to the open meeting law (chapter 39, sections 23A, 23B and 23C of the General laws).

79 SECTION 4A. The housing bank commission shall (a) provide funding as has been first approved by
80 an annual or special town meeting of the town of Nantucket, in the form of grants, loans, loan
81 guarantees, lines of credit, interest subsidies, rental assistance or any other means determined to
82 further the goals of the housing bank for eligible community housing activities under section 5, (b)
83 accept gifts of funds to further the purposes of the housing bank; (c) prepare an annual budget,

84 provided however no more than 5% of all funds received by the housing bank during any fiscal year
85 may be spent for administration purposes without approval by an annual or special town meeting of
86 the town of Nantucket, (d) hire staff and obtain professional services that are necessary in order to
87 perform its duties; (e) adopt regulations and procedures that it considers necessary or appropriate,
88 subject to this act, regarding the use and investment of its funds and the keeping of records and
89 accounts; (f) adopt procedures in the form of rules and regulations that it considers necessary or
90 appropriate setting forth its programmatic goals, policies and recommendations to serve as standards
91 for decisions to provide funding for programs under section 5, provided however, such procedures
92 shall not take effect until approved by an annual or special town meeting of the town of Nantucket;
93 and (g) enter into and enforce contracts that it considers necessary to achieve the goals of this
94 legislation.

95 SECTION 4B. The Town of Nantucket may appropriate money to be deposited in the Nantucket
96 Housing Fund as provided in said section 7A. The Town of Nantucket is hereby further authorized to
97 provide funds to repay any notes or bonds of the town issued pursuant to this section and, when
98 authorized by a two thirds vote of town meeting as defined in G.L. Chapter 44. section. 1, to incur debt
99 of the town for such purposes in accordance with the provisions of G. L. Chapter 44, section 7(3).

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101 SECTION 4C. The housing bank may issue bonds and notes to further the purposes of the housing
102 bank but only if the issuance of these bonds or notes has been approved by a two thirds majority vote
103 at a Nantucket town meeting. The proceeds of such bonds or notes may be used to pay, in whole or in
104 part, for the purposes set forth in section 4A of this act, reserves for debt service and other expenses, to
105 pay consulting appraisal advisory and legal fees and costs incidental to the issuance and sale of such
106 bonds and notes, to purchase, refund or renew bonds or notes previously issued and to pay an other

107 costs and expenses of the housings bank commission necessary for the accomplishment of its
108 purposes. Bonds or notes issued pursuant to this act shall be authorized by the commission which shall
109 have full power and authority to determine the amount, form, terms, conditions, provisions for
110 payment of interest and all other details thereof and to provide for the sale and issuance at such price
111 and in such manner as the Commission shall determine subject only to any limitation set forth in this
112 Act. Unless the town of Nantucket shall have authorized by two-thirds vote of a town meeting the
113 pledging of the full faith and credit of the town or county of Nantucket to secure an issue of bonds or
114 notes of the housing bank, all bonds or notes issued hereunder shall be payable solely from the fees
115 and other revenues of the housing bank pledged to their payment and shall not be deemed a pledge of
116 the full faith and credit of the Town or County of Nantucket, the Commonwealth of Massachusetts or
117 any political subdivision thereof.

118 The Housing Bank Commission may enter into any agreements, including without limitation a loan
119 agreement and a trust agreement, necessary to effectuate and to secure any bonds or notes issued by
120 the housing bank. Such agreements may pledge or assign, in whole or in part, the revenues and other
121 money held or to be received by the housing bank. Such agreements may contain such provisions for
122 protecting and enforcing the rights, security and remedies of the holders of such bonds or notes,
123 including, without limiting the generality of the foregoing, provisions defining defaults and providing
124 for remedies in the event thereof which may include the acceleration of maturities and covenants
125 setting forth the duties of, and limitations on, the housing bank in relation to the custody, safeguarding,
126 investment and application of money, the issuance of additional debt obligations, the use of any
127 surplus proceeds of the borrowing, including any investment earnings thereon, and establishment of
128 special funds and reserves.

129

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

139

140 The trustee with respect to any such trust agreement entered into pursuant to this section shall be a
141 trust company or a bank having the powers of a trust company within the commonwealth. Any such
142 trust agreement may provide that any money received thereunder may be held, deposited or invested
143 by the trustee, notwithstanding the provisions of section 7A pending the disbursement thereof, in any
144 deposits or investments which are lawful for the funds of savings banks and shall provide that any
145 officer with whom or any bank or trust company with which such money shall be deposited shall act
146 as trustee of such money and shall hold and apply the same for the purposes hereof and thereof,
147 subject to such regulation or limitation as this act or such trust agreement may provide.

148

149 It shall be lawful for any bank or trust company within the Commonwealth to act as depository of the
150 proceeds of bonds or notes, revenues or other money hereunder and to furnish such indemnifying
151 bonds or to pledge such security, if any, as may be required by the Commission. Any trust agreement
152 entered into pursuant to this section may set forth the rights and remedies of the holders of any bonds

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

165 SECTION 4D. If at any time any principal or interest is due or about to come due on any bonds or
166 notes of the housing bank to secure which the full faith and credit of the town of Nantucket or
167 Nantucket county shall have been pledged and funds to pay the same are not available, the
168 Commission shall certify to the town treasurer and selectmen of the town or to the county treasurer
169 and county commissioners of the county, as appropriate, the amount required to meet such obligations
170 and the town treasurer or the county treasurer shall thereupon pay over to the housing bank the amount
171 so certified from any funds in the treasury. For the purpose of providing or restoring to the treasury
172 the sums so paid over to the housing bank, the town treasurer, with the approval of the selectmen, is
173 authorized to incur debt outside the town's debt limit and issue notes therefore for a period not
174 exceeding two years and to renew or refund the same from time to time until the town shall have
175 received from the housing bank sufficient funds to repay such notes and the interest thereon in full.

176 Whenever the town or the county shall have been required to pay over any sums of money to the
177 housing bank under this section, the housing bank shall be precluded from issuing any grants or
178 purchasing, constructing or making improvements to land or housing, or issuing any of its bonds or
179 notes for purposes other than repaying the town, until the housing bank shall have repaid the town in
180 full for all sums paid to the housing bank hereunder, including interest on any notes issued for such
181 purpose, unless the town shall have appropriated sufficient funds for such purpose at a town meeting.

182 SECTION 4E. Bonds and notes issued under the provisions of this act are hereby made securities in
183 which all public officers and public bodies of the Commonwealth and its political subdivisions, all
184 insurance companies, trust companies in their commercial departments, savings banks, cooperative
185 banks, banking associations, investment companies, executors, administrators, trustees and other
186 fiduciaries may properly and legally invest funds, including capital in their control or belonging to
187 them. Such bonds and notes are hereby made securities that may properly and legally be deposited
188 with and received by any state or municipal officer or any agency or political subdivision of the
189 Commonwealth for any purpose for which the deposit of bonds or obligations of the Commonwealth is
190 now or may hereafter be authorized by law.

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

194 SECTION 4G. The Housing Bank's revenues and income will be used solely for the furtherance of its
195 public purposes and shall be exempt from taxation. The Housing Bank and all its revenues, income
196 and real and personal property used solely by the Housing Bank in furtherance of its public purposes
197 from the date of acquisition thereof, shall be exempt from taxation and from betterments and special
198 assessments and the Housing Bank shall not be required to pay any tax, excise or assessment to or for

199 the Commonwealth or any of its political subdivisions. Bonds and notes issued by the Housing Bank,
200 their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times
201 be exempt from taxation within the Commonwealth.

202 SECTION 4H. With authorization of an annual or special town meeting of the town of Nantucket as
203 provided for in section 4C of this Act, bonds and notes may be issued under this act without obtaining
204 the consent of any department, division, commission, board, bureau or agency of the town or county of
205 Nantucket, except that the full faith and credit of the town or county of Nantucket shall not be pledged
206 for the payment of such bonds or notes unless such pledge shall have been authorized by a two-thirds
207 vote as provided in this Act, and without any other proceedings or the happening of any other
208 conditions or things than those proceedings, conditions or things which are specifically required
209 therefore by this act. The validity of and security for any bonds and notes issued by the housing bank
210 shall not be affected by the existence or nonexistence of any such consent or other proceedings,
211 conditions or things.

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

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

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

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

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

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

228 (e) Rental assistance programs;

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

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

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

233 (i) Mixed -use development projects.

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

240 SECTION 7A. The Housing Bank Commission shall meet its financial obligations by drawing upon a
241 fund to be set up as a revolving or sinking account of the housing bank commission in the treasury of
242 the Town of Nantucket. Deposits into the Nantucket Housing Fund shall include (a) funds
243 appropriated, borrowed or transferred to be deposited into the fund by vote of the county

244 commissioners of Nantucket county or of the town meeting; (b) voluntary contributions of money and
245 other liquid assets to the fund; and (c) revenues from fees imposed upon the transfer of real property
246 interests under section 9 occurring on Nantucket after the effective date of this act as set forth in
247 section 15. Grants or gifts of money or other assets to the housing bank shall be subject to any
248 restrictions or limitations imposed by the grantor or donor. All expenses lawfully incurred by the
249 Housing Bank Commission in carrying out this act shall be evidenced by proper vouchers and shall be
250 paid by the treasurer of the town of Nantucket only upon submission of warrants duly approved by the
251 housing bank commission. The housing bank commission treasurer shall prudently invest available
252 assets of the fund under the regulations and procedures adopted by the housing bank commission
253 under clause (f) of section 4A, and all income from investments shall accrue to the fund.

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

264 SECTION 8. The housing bank commission shall keep a full and accurate account of its actions
265 including a record of when, from or to whom, and on what account money has been paid or received
266 under this act. These records shall be subject to examination by the director of accounts or the

267 director's agent under section 45 of chapter 35 of the General Laws. There shall be an annual audit
268 conducted by a duly recognized accounting firm, and a copy of that audit shall be distributed to the
269 Board of Selectmen of the Town of Nantucket. However, schedules of beneficiaries of trusts, lists of
270 stockholders of corporations, lists of partners, partnership agreements, tax returns, and other materials
271 deemed by the Commission to be private to a particular entity or individual, which are filed with the
272 Commission for the purposes of determining or fixing the amount of fee imposed by this Act for any
273 transfer or for the purpose of determining the existence of any exemption pursuant to this act shall not
274 be public records for the purposes of section 10 of chapter 66 of the General Laws.

275 SECTION 9. There is hereby imposed a fee equal to one per cent of the purchase price upon the
276 transfer of any interest in real property located within the Town of Nantucket. The fee shall be the
277 liability of the seller of the real property interest, and any agreement between the purchaser and the
278 seller or any other person with reference to the allocation of the responsibility for bearing this fee shall
279 not affect the liability of the seller. This fee shall be paid to the Nantucket Community Housing Bank
280 Commission or its designee. Fees shall be accompanied by a copy of the deed or other instrument
281 evidencing the transfer, if any, and an affidavit signed under oath or under the pains and penalties of
282 perjury by the seller or the seller's legal representative, attesting to the true and complete purchase
283 price and the basis, if any, upon which the transfer is claimed to be exempt in whole or in part from the
284 fee imposed. The Housing Bank Commission, or its designee, shall promptly execute and issue a
285 certificate stating that the appropriate fee has been paid or that the transfer is exempt from the fee and
286 stating the basis for the exemption. The register of deeds for Nantucket county, and the assistant
287 recorder for the registry district of Nantucket county, shall not record or register, or receive or accept
288 for recording or registration, any deed, except a mortgage deed, for any real property interest located
289 in Nantucket unless this certificate is attached. Failure to comply with this requirement shall not affect

290 the validity of any instrument. The Housing Bank commission shall deposit all fees received under this
291 section with its treasurer as part of the fund established by section 7A. The fee imposed under this
292 section shall be due at the time of transfer of the real property interest.

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

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

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

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

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

313 the difference between the fair market value of the real property interests transferred and the amount of
314 consideration claimed by the seller to have been paid or transferred, if the purchaser shall have been at
315 the time of transfer the spouse, the lineal descendant, or the lineal ancestor of the seller, by blood or
316 adoption, and otherwise it shall be presumed that consideration was paid in an amount equal to the fair
317 market value of the real property interests transferred, at the time of transfer.

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

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

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

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

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

331 (-i-) Transfers made to a corporation or partnership or limited liability company at the time of its
332 formation, pursuant to which transfer no gain or loss is recognized under the provisions of section
333 three hundred and fifty-one or seven hundred and twenty-one of the Internal Revenue Code of 1986, as
334 amended; provided, however, that such transfer shall be exempt only in the event that (i) with respect
335 to a corporation, the transferor retains an interest in the newly formed corporation which is equivalent

336 to the interest the transferor held prior to the transfer, or (ii) with respect to a partnership or limited
337 liability company, the transferor retains after such formation rights in capital interests and profit
338 interests within such partnership or limited liability company which are equivalent to the interest the
339 transferor held prior to the transfer.

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

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

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

357 (-m-) The first \$2 million of the sale price of any transfer or series of transfers of real property
358 interests in a single parcel. Said exemption may be adjusted for inflation as determined tri-annually by

359 vote of the majority of the Nantucket Community Housing Bank commission. For purposes of this
360 subsection, "inflation" shall mean the increases, if any, in the total of prices paid for real property
361 transfers year to year for real property within the Town of Nantucket.

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

365 SECTION 11A. To be consistent with the Nantucket Community Housing Bank Act, the Nantucket
366 Islands Land Bank Act (being chapter 669 of the Acts of 1983, as amended by chapter 407 of the Acts
367 of 1984, by chapter 202 of the Acts of 1985, by chapter 666 of the Acts of 1987, by chapter 392 of the
368 Acts of 1991, by chapter 309 of the Acts of 1994, by chapter 370 of the Acts of 2002, and by chapter
369 130 of the Acts of 2006, referred to collectively as the "Land Bank Act") is hereby amended as
370 follows:

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

373 "Real property interest", any present or future legal or equitable interest in or to real property, and
374 any beneficial interest therein, including the interest of any beneficiary in a trust which holds any legal
375 or equitable interest in real property; the interest of a partner or member in a partnership or limited
376 liability company, the interest of a stockholder in a corporation, the interest of a holder of an option to
377 purchase real property, the interest of a buyer or seller under a contract for purchase and sale of real
378 property, and the transferable development rights created under Massachusetts General Laws chapter
379 183A; but shall not include any interest which is limited to any of the following: the dominant estate
380 in any easement or right of way; the right to enforce any restriction; any estate at will or at sufferance;
381 any estate for years having a term of less than thirty years; any reversionary right, condition, or right of

382 entry for condition broken; and the interest of a mortgagee or other secured party in any mortgage or
383 security agreement.

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

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

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

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

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

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

405 prior to the transfer or (ii) with respect to a partnership or limited liability company, the transferee
406 receives property (including real property interests and other property received) which is the same
407 fraction of the property of the partnership or limited liability company as the fraction of the capital and
408 profit interests in the transferor formerly owned by the transferee.

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

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

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

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

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

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

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

431 (b) Penalties. Any person who, without fraud or willful intent to defeat or evade a fee imposed by
432 section 9, fails to pay all or a portion of the fee within 30 days after the time of transfer, shall pay a
433 penalty equal to five per cent of the outstanding fee as determined by the housing bank commission for
434 each month or portion of a month that the fee is not paid in full, but in no event shall the amount of
435 any penalty imposed under this paragraph exceed 25 per cent of the unpaid fee due at the time of
436 transfer. Whenever the housing bank commission determines that all or a portion of a fee due under
437 section 9 was unpaid due to fraud with intent to defeat or evade the fee, a penalty equal to the amount
438 of the fee as determined by the housing bank commission shall be paid by the seller in addition to the
439 fee.

440 SECTION 13A. (a) The Housing Bank Commission shall notify a seller by registered or certified mail
441 of any failure to discharge in full the amount of the fee due under section 9 and any penalty or interest
442 assessed. The Housing Bank Commission shall grant a hearing on the matter of the imposition of the
443 fee, or of any interest or penalty assessed, if a petition requesting a hearing is received by the Housing
444 Bank Commission within 30 days after the mailing of the notice. If the Commission has determined
445 that a fee is due by asserting the application of the evasion of fee doctrine described in section 11 of
446 this Act, then the seller shall have the burden of demonstrating by clear and convincing evidence as
447 determined by the Commission that the transaction possessed both: (i) a valid, good faith business
448 purposes other than avoidance of the fee set forth in section 9 of this Act and (ii) economic substance
449 apart from the asserted fee avoidance benefit. In all such cases the seller shall also have the burden of
450 demonstrating by clear and convincing evidence as determined by the commission that the asserted

451 non-fee-avoidance business purpose is commensurate with the amount of the fee pursuant to section 9
452 to be thereby avoided. The Housing Bank Commission shall notify the seller in writing by registered
453 or certified mail of its determination concerning the deficiency, penalty or interest within 15 days after
454 the hearing. Any party aggrieved by a determination of the Housing Bank Commission concerning a
455 deficiency, penalty or interest may, after payment of the deficiency, appeal to the district or superior
456 court within 3 months after the mailing of notification by the Housing Bank Commission.

457

458 Upon the failure to timely petition for a hearing, or appeal to the court, within the time limits
459 established in this paragraph, the seller shall be bound by the terms of the notification, assessment or
460 determination, and shall be barred from contesting the fee or any interest and penalty, as determined
461 by the Housing Bank Commission. All decisions of these courts shall be subject to appeal. Every
462 notice to be given under this section by the Housing Bank Commission shall be effective if mailed by
463 certified or registered mail to the seller at any available legal address of the seller, or at the address
464 stated in a recorded or registered instrument by virtue of which the seller holds any real property
465 interest, the transfer of which gives rise to the fee which is the subject of the notice; and, if no address
466 is stated or if the transfer is not evidenced by an instrument recorded or registered in the public records
467 of Nantucket County, the notice shall be effective when mailed to the seller in care of any person
468 appearing of record to have had a fee interest in the land at the time of the transfer, at the address of
469 that person as set forth in an instrument recorded or registered in Nantucket County.

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

473 (c) Sellers applying for an exemption under subsections (a) through (n) of section eleven shall be
474 required at the time of application for exemption to execute an agreement legally binding on sellers
475 and separately legally binding upon any Legal Representative of the sellers (1) assuming complete
476 liability for any fee, plus interest and penalties if any, waived on account of an allowed exemption
477 subsequently determined to have been invalid, and (2) submitting to the jurisdiction of the trial court
478 of the commonwealth sitting in Nantucket County. Fees, plus interest and penalties if any, shall be
479 calculated as of the date of the initial property transfer. Execution of the above-described agreement
480 shall not be required of any mortgagee, pledge, purchaser or judgment creditor unless notice of the
481 agreement has been recorded or filed by the Housing Bank Commission.

482

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

488

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

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

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

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

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