

SENATE, No. 2226

AN ACT TO FURTHER CLARIFY THE NANTUCKET ISLANDS LAND BANK ACT REGARDING REAL PROPERTY INTERESTS SUBJECT TO THE LAND BANK ACT'S TRANSFER FEE.

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

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

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

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10 "Real property interest", any present or future legal or equitable interest in or to real property, and
11 any beneficial interest therein, including the interest of any beneficiary in a trust which holds any legal
12 or equitable interest in real property; the interest of a partner or member in a partnership or limited

13 liability company, the interest of a stockholder in a corporation, the interest of a holder of an option to
14 purchase real property, the interest of a buyer or seller under a contract for purchase and sale of real
15 property, and the transferable development rights created under Massachusetts General Laws chapter
16 183A; but shall not include any interest which is limited to any of the following: the dominant estate
17 in any easement or right of way; the right to enforce any restriction; any estate at will or at sufferance;
18 any estate for years having a term of less than thirty years; any reversionary right, condition, or right
19 of entry for condition broken; and the interest of a mortgagee or other secured party in any mortgage
20 or security agreement.

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22 (b) Section 10A of the Land Bank Act is hereby repealed in its entirety.

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

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

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34 provided, however, that such transfer shall be exempt only in the event that (i) with respect to a
35 corporation, the transferor retains an interest in the newly formed corporation which is equivalent to

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

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

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

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

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

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

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

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