



**POLICY GOVERNING THE DISPOSITION OF PERSONAL PROPERTY
BY THE ROCHESTER LAND BANK CORP.**

The disposition of personal property by the Rochester Land Bank Corp., herein referred to as the Land Bank, shall be governed by the general guidelines set forth in this Policy, and shall at all times be consistent with the provisions of Article 16 of the NYS Not-for-Profit Corporation Law (the "Land Bank Act"), applicable provisions of NYS Public Authorities Law ("PAL") and NYS Not-for-Profit Corporation Law ("N-PCL"), and all applicable Federal, State, and local laws, rules, regulations and ordinances. This Policy shall apply to any disposal, transfer or conveyance of personal property of the Land Bank. This Policy addresses rules governing the permissible methods and notice disposition of High Value Personal Property under PAL §§ 595-97, as well as the legal requirements governing the disposition of personal property without regard to its value. Another policy of the Land Bank governs the disposition of real property.

1. DEFINITIONS.

- A. "Contracting Officer" shall mean the person responsible for the Land Bank's compliance with, and enforcement of, this Policy; the Land Bank Board has designated the Executive Director of the Land Bank to serve as Contracting Officer.
- B. "Dispose," "disposal" or "disposition" shall mean transfer of title or any other beneficial interest in personal property.
- C. "Personal property" shall mean everything, except money and negotiable instruments of a set value and real property, which may be the subject of ownership, including without limitation movable household belongings, equipment, vehicles and contractual rights.
- D. "High Value Personal Property" shall mean personal property exceeding five thousand dollars (\$5,000) in value.

2. GENERAL DUTIES, INVENTORIES, REPORTS.

- A. Pursuant to PAL §2896(2), the Land Bank shall:
 - (1) Maintain adequate inventory controls and accountability systems for all High Value Personal Property owned by the Land Bank and under its control;
 - (2) Periodically inventory such High Value Personal Property to determine which property may be disposed of;
 - (3) Produce a written report of such inventory in accordance with Subsection 2(B) of this Policy; and
 - (4) Transfer or dispose of such High Value Personal Property as promptly as possible in accordance with this Policy.

B. Inventories and Reports. The Land Bank shall:

- (1) Under PAL §2896(3), publish, not less frequently than annually, a report that, in addition to matters related to real property, includes a list and full description of all High Value Personal Property disposed of during such period, the price or other consideration received by the Land Bank, and the name of the transferee; and
- (2) Deliver copies of such report to all agencies required by law including the Comptroller of the State of New York, the Director of the Budget of State of New York, the Commissioner of the New York State Office of General Services, the Director of the Authority Budget Office and the New York State Legislature (via distribution to the Majority Leader of the Senate and the Speaker of the Assembly).
- (3) Maintain and make available for public review and inspection a complete inventory of all High Value Personal Property dispositions by the Land Bank. Such inventory shall include a complete copy of the sales contract including all terms and conditions including, but not limited to, any form of compensation received by the Land Bank or any other party which is not included within the sale price. Copies may be kept in original form, electronically, or in both forms. All High Value Personal Property dispositions shall be listed on this inventory within one week of disposition. Such records shall remain available for public inspection in the property disposition inventory indefinitely.
- (4) Keep separate account of and issue an annual report on Specified Purpose Property pursuant to N-PCL §513, as provided for in Subsection 4(C) of this Policy.

C. Appraisal. The Land Bank shall have an independent appraiser perform an appraisal of the value of High Value Personal Property, and of personal property that has a reasonable potential to exceed five thousand dollars (\$5,000.00) in value, if the personal property is not readily valued by reference to an active market due to its unique nature or due to the unique circumstances of the proposed transaction. The Land Bank may have an independent appraisal performed for any other personal property as it shall deem necessary or prudent to abide by this Policy or to advance the Land Bank's mission. Appraisal services shall be provided or paid for by the City of Rochester Division of Real Estate pursuant to Shared Services Agreement §1.C.

3. DISPOSITION GENERALLY.

A. Purpose. The Land Bank shall have the right to dispose of its personal property for any valid purpose and subject to the terms of this Policy. The Land Bank may convey personal property with or without warranty, and upon such other terms and conditions as the Land Bank or the Contracting Officer deems proper.

B. Supervision and Direction. Except as otherwise provided herein, the Contracting Officer shall have supervision and direction over the disposition and sale of personal property of the Land Bank. The Board delegates to the Contracting Officer the authority to enter into and execute agreements, instruments of conveyance and all other related documents pertaining to the conveyance of personal property by the Land Bank and to take such other

action as is necessary or proper to dispose of personal property under the provisions of this Policy . In the event that the Executive Director is unavailable, unable, or unwilling to carry out this responsibility, the Board President shall have authority to act in this capacity.

C. Custody and Control. The custody and control of Land Bank personal property, pending its disposition, shall be performed or supervised by the Contracting Officer.

D. Consideration.

(1) Value/Amount. After abiding by the procedures and considering the factors specified in this Policy, the sufficiency of the consideration shall be determined by the Land Bank in its sole discretion. The Land Bank will consider both the fair market value of personal property and the Property Costs in determination of consideration for each property. "Property Costs" shall mean the aggregate costs and expenses of the Land Bank attributable to the specific personal property being sold, including costs of acquisition, maintenance, repair, storage, marketing, and legal expenses as well as the indirect costs of the operations of the Land Bank allocable to the property. The Land Bank shall not dispose of personal property for less than fair market value except as provided for in Section 7 of this Policy.

(2) Form. The consideration to be provided by the transferee may take the form of monetary payments and secured financial obligations, deferred financing, performance of contractual obligations, imposition of restrictive covenants, or other obligations and responsibilities of the transferee, or any combination thereof, and such other forms of consideration as are consistent with state and local law. The Land Bank may consider alternative financing options as a method of disposition.

E. Validity of Transfer Instrument. A bill of sale, lease, or other instrument executed by or on behalf of the Land Bank, purporting to transfer title or any other interest in property of the Land Bank in accordance herewith shall be conclusive evidence of compliance with the provisions of this Policy and all applicable law insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to transfer of title of such property.

4. SPECIFIED PURPOSE PROPERTY.

As a Type C not-for-profit corporation and pursuant to N-PCL §513, the Land Bank shall hold full ownership rights in personal property of any kind that may be given, granted, bequeathed or devised to or otherwise vested in the Land Trust in trust for, or with a direction to apply the same to, any purpose specified in the Land Bank's certificate of incorporation ("Specified Purpose Property").

A. Not Trustee. The Land Bank and shall not be deemed a trustee of an express trust of Specified Purpose Property.

B. Application. Except as may be otherwise permitted under Article 8 of the NYS Estates, Powers and Trusts Law or N-PCL §555 (regarding release or modification of restrictions on management, investment, or purpose), the Land Bank Board shall apply all Specified Purpose Property to the purposes specified in the gift instrument and to the payment of the reasonable and proper expenses of administration of such property.

C. Accounting and Reporting. Pursuant to N-PCL §513, the Land Bank shall cause to be kept accurate accounts of its Specified Purpose Property separate and apart from the accounts of the Land Bank's other assets. Unless the terms of the particular instrument conveying the Specified Purpose Property provide otherwise, the Land Bank treasurer shall make an annual report to the Board concerning such property, the use made, and the income thereof.

D. Disposal. Specified Purpose Property shall be disposed:

- (1) in accordance with the instructions, if any, contained in the instrument conveying such property to the Land Bank;
- (2) in a manner that does not substantially interfere with the purpose set forth in the instrument conveying such property to the Land Bank; and
- (3) if the Specified Purpose Property consists of personal property exceeding five thousand dollars (\$5,000.00) in value (i.e., Specified Purpose Property that is also High Value Personal Property in accordance with a method provided for under Section 5 of this Policy, but only to the extent doing so does not contradict the instructions and purposes set forth in the instrument conveying such property to the Land Bank.

5. ABANDONED PROPERTY

Any personal property found on real property acquired by the Land Bank, other than personal property that has been conveyed to the Land Bank under the terms of the contract, deed or other instrument conveying the real and/or to the Land Bank, shall be deemed "Abandoned Property" under this Section of the Policy. The Land Bank shall provide the former owner or possessor of recoverable Abandoned Property with the opportunity to claim it. If the Abandoned Property is not claimed, then the Land Bank shall dispose of it in accordance with this Policy and other applicable laws. At present, compliance with these requirements is implemented by the City of Rochester Division of Real Estate and the City's Department of Environmental Services pursuant to a five-year Shared Services Agreement between the City and Land Bank approved in February 2014. If that Shared Services Agreement or the abandoned property arrangements being implemented thereunder are modified or revoked, the Land Bank shall make other arrangements to abide by the Abandoned Property provisions of this Policy.

A. Vacating Real Property. Occupants and/or former owners of real property acquired by the Land Bank shall be given reasonable opportunity to remove personal property prior to vacating the real property in accordance with the City's tax foreclosure eviction procedures and State and local law.

B. Identifying and Managing Recoverable Property. After real property is acquired by the Land Bank and as part of the property management requirements of the Land Bank's Policy Governing the Acquisition of Real Property, Recoverable Abandoned Property shall be identified and, to the extent practicable, secured either on-site or in off-site storage. For purposes of this Policy, "Recoverable Abandoned Property" is the Abandoned Property that remains after the following abandoned items are removed:

(1) Personal property that is so damaged, corroded, decayed or nonfunctional and personal property that is otherwise of such insignificant value that, in the judgment of property management personnel that is exercised in accordance with State and local laws and the City's eviction procedures, such property should be discarded because it is not legally required nor reasonably beneficial to seek out and provide the property's former owner with an opportunity to claim it;

(2) Hazardous substances or other substances, materials, or devices that pose a threat to human health or the environment, or cause or threaten to cause a public nuisance, or may harm or decrease the value of the real premises where it is found;

(3) Illegal drugs or other contraband;

(4) Perishables; or

(5) Refuse.

C. Opportunity to Reclaim. In the event that Recoverable Abandoned Property is found on vacant real property owned by the Land Bank, the former owner or occupant shall be provided with the opportunity to reclaim such property in accordance with the following provisions:

(1) Notice and Opportunity. Reasonable diligence shall be used to identify and notify the former owner or occupant of the premises that is most likely to be the owner of the Recoverable Abandoned Property. Once identified and located, such person or persons shall be provided with a notice that:

- i. describes the Recoverable Abandoned Property;
- ii. provides the recipient with at least thirty (30) days to reclaim it;
- iii. if applicable, notifies the recipient of any special containers, equipment, or vehicles that will be required to take possession of and remove the Abandoned Personal Property;

- iv. if applicable, specifies and describes the basis for storage, transport and/or other fees that the recipient will be required to pay in order to reclaim the property; only those fees that are assessed and collected in compliance with State or local law and in accordance with the City's standard eviction procedures and practices shall be assessed;
- v. notifies the recipient that he or she will lose all rights in the Recoverable Abandoned Property if it is not reclaimed and removed by the deadline and in the manner specified above; and
- vi. contains any other information that is required by State or local law or that the City provides in its standard abandoned property notices.

(2) Unclaimed Property. Recoverable Abandoned Property that goes unclaimed after completing the notice and opportunity process under Paragraph 5(C)(1) of this Policy shall be deemed "Unclaimed Property" that becomes the personal property of Land Bank and shall be disposed of in accordance with this Policy.

D. Disposition Options. Unclaimed Property may be used or disposed of by the Land Bank by one of the methods described below or by any other method that the Land Bank desires, provided that, regardless of the method chosen, the use or disposition is implemented in a manner that complies with this Policy. Unclaimed Property that is worth more than five thousand dollars (\$5,000) must be disposed of in accordance with the additional procedures for High Value Personal Property, as specified in Section 6 of this Policy.

(1) Use. If the Unclaimed Property has some usefulness to the purpose, mission, or operations of the Land Bank that equals or exceeds its estimated fair market value, the Land Bank may incorporate the Unclaimed Property into its operations for the use desired. For purposes of illustration and without limitation, an unclaimed furnishing may be incorporated into the redevelopment or renovation of the building where it was abandoned.

(2) Surplus Property Auction. Pursuant to Shared Services Agreement §1.D, Unclaimed Property may be auctioned by the City on the Land Bank's behalf through the surplus property auctions that are conducted by private contractors under contract with and under the supervision of the City Finance Department's Bureau of Purchasing.

6. PERSONAL PROPERTY EXCEEDING \$5000 IN VALUE

The Land Bank shall dispose of High Value Personal Property by one of the following methods. These requirements shall not apply to personal property valued at five thousand dollars or less.

A. Public Auction. The Land Bank may dispose of High Value Personal Property by auction:

(1) By publicly advertising the auction, publicly disclosing all bids, and award of the property in accordance with the three procedures required for sealed bidding as set forth in Subparagraphs 6(B)(1), (2), and (3) of this Policy, below;

- (2) Under PAL § 2897(6)(c)(ii), without the public advertising, disclosure and award processes set forth in Subparagraphs 6(B)(1),(2), and (3) of this Policy, below, provided that the fair market value does not exceed fifteen thousand dollars (\$15,000);
- (3) Under PAL § 2897(6)(c)(i), without the public advertising, disclosure and award processes set forth in Subparagraphs 6(B)(1),(2), and (3) of this Policy, below, when the property has qualities separate from its utilitarian purpose, such as artistic quality, antiquity, historical significance, rarity, or other quality of similar effect, that would tend to increase its value, or the is to be sold in such quantity that, if it were disposed by auction in accordance with Paragraph 6(A)(1) or by sealed bid in accordance with Subsection 6(B) of this Policy , would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by a less elaborate auction process;
- (4) Under PAL § 2897(6)(c)(iii), when the bid prices after advertising therefor are not reasonable, either as to all or part of the property, or have not been independently arrived at in open competition; or
- (5) Under PAL § 2897(6)(c)(vi), without the public advertising, disclosure and award processes set forth in Subparagraphs 6(B)(1),(2), and (3) of this Policy as set forth below, when such transaction is otherwise authorized by law.

In all instances, the Land Bank shall conduct the auction, including soliciting qualified bidders and communicating the terms of sale, in a manner designed to obtain as much competition as feasible under the circumstances.

B. Sealed Bid. Under Public Authorities Law § 2897(6)(a) and (b), the Land Bank may dispose of High Value Personal Property to any qualified purchaser by sealed bids provided that:

- (1) The public advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property;
- (2) All bids shall be publically disclosed at the time and place stated in the advertisement; and
- (3) The award shall be made with reasonable promptness by notice to the responsible bidder whose bid conforms to the invitation for the bid and is most advantageous to the state, after considering price and other relevant factors; provided that all bids may be rejected when it is in the public interest to do so.

C. Transfers to Governmental or Public Entities. Under PAL§ 2897(6)(c)(iii), Land Bank may convey High Value Personal Property to governmental or public entities, without undergoing an auction or sealed bid process, provided that the consideration provided to the Land Bank meets or exceeds the estimated fair market value and subject to other satisfactory terms of disposal as determined by negotiation. If the terms and conditions of the transfer require that the ownership and use of the asset will remain with the governmental or public entity, High Value Personal Property may be disposed of for less than fair market value in accordance with Paragraph 7(A)(1) of this Policy.

D. Negotiation. The Land Bank may dispose of High Value Personal Property by negotiation and without soliciting offers via the auction or sealed bid process as provided for above, under any one of the six circumstances described in Subparagraphs 6(D)(1)(i) through (vi), below, provided that the Land Bank solicits such competition as is feasible under the circumstances and, where applicable, files a property disposition notice at least ninety days in advance of the transaction as provided for in Paragraph 6(D)(2) below.

(1) Disposition by negotiation is permissible:

- i. under PAL § 2897(6)(c)(i), when the High Value Personal Property involved has qualities separate from its utilitarian purpose, such as artistic quality, antiquity, historical significance, rarity, or other quality of similar effect, that would tend to increase its value, or the High Value Personal Property is to be sold in such quantity that, disposition by auction in accordance with Paragraph 6(A)(1) or by sealed bid in accordance with Subsection 6(B) of this Policy would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposition can be obtained by negotiation;
- ii. under PAL § 2897(6)(c)(ii), when the fair market value of the High Value Personal Property does not exceed fifteen thousand dollars (\$15,000.00);
- iii. under PAL § 2897(6)(c)(iii), when bids obtained after advertising are not reasonable or have not been arrived at in open competition;
- iv. under PAL § 2897(6)(c)(v) and (7)(a)(ii), when the purpose of the disposal is within the purpose, mission, or governing statute of the Land Bank;
- v. under PAL § 2897(6)(c)(vi), when such action is otherwise authorized by law; or
- vi. under PAL § 2897(6)(c)(iv), when the High Value Personal Property is conveyed to the State or a political subdivision in accordance with Subsection 6(C) above.

(2) Property Disposition Notice.

Under PAL §2897(6)(d), an explanatory statement shall be prepared and filed at least ninety (90) prior to each disposal by negotiation of:

- i. High Value Personal Property which has an estimated fair market value in excess of fifteen thousand dollars (\$15,000.00); or

- ii. Any real property and related High Value Personal Property disposed of by exchange, regardless of value, or any High Value Personal Property any part of the consideration for which is real property.

The explanatory statement shall be transmitted not less than ninety (90) days prior to the disposition to the New York State Comptroller, the Director of the Budget, the Commissioner of General Services, the Public Authorities Budget Office, and the Legislature. A copy of the explanatory statement shall be preserved in the files of the Land Bank.

7. Disposal of Personal Property for Less than Fair Market Value

A. When Permissible. The Land Bank may dispose of personal property for less than fair market value, subject to the information notice and Board review requirements of Subsections 7(B) and (C) of this Policy when the property at issue is High Value Personal Property, if:

- (1) Under PAL § 2897(7)(a)(i), when the disposal is to a governmental or other public entity, and the terms and conditions of the transfer require that the ownership and use of the personal property will remain with the governmental or any other public entity; or
- (2) Under PAL§ 2897(7)(a)(ii), when the purpose of the disposal is within the purpose, mission, or governing statute of the Land Bank.

B. Information Notice. In the event that the proposed below fair market value transfer involves High Value Personal Property, the following information must be provided to the Board and the public under PAL§ 2897(7)(b):

1. A full description of the asset;
2. An appraisal of the fair market value of the asset, and any other information establishing the fair market value sought by the Board;
3. A description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits to the communities in which the asset is situated as required by the transfer;
4. A statement of the value received compared to the fair market value; and
5. The names of any private parties participating in the transfer, and if different than the statement under Paragraph B(4) of this Section, above, a statement of the value to the private party; and
6. The names of other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.

C. Board Review: In the event that the proposed below fair market value transfer involves High Value Personal Property, the Board shall consider the information described in Paragraph 7(B) of this Policy and make a written determination by resolution that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer.

8. Disposition by Commissioner of General Services

If the Board deems that disposition of personal property by the Commissioner of General Services will be advantageous to the Land Bank and the State of New York, the Land Bank may enter into an agreement with the Commissioner of General Services whereby the Commissioner may dispose of personal property of the Land Bank under terms and conditions agreed to by the Land Bank and the Commissioner of General Services. In disposing of any such property of the Land Bank, the Commissioner of General Services shall be bound by the terms of PAL §§ 2895 - 2897, and references to the Contracting Officer therein and in this Policy shall be deemed to refer to the Commissioner of General Services.

9. Transferees' Responsibilities

Unless otherwise approved by the Board and specified in a bill of sale or other written instrument executed by the Land Bank, the transferee shall accept personal property from the Land Bank in "as is" condition, and shall agree to assume and undertake any and all liability and expense resulting from the presence of hazardous substances or pollutants of any kind within or on the personal property.

10. Disposition of Proceeds of Sale

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

11. Exceptions to Policy

Any transaction that requires an exception to this Policy governing personal property dispositions shall require the approval of the Land Bank Board, with a description of the exception and the reasons therefor.

12. Annual Review and Amendments of Policy

This Policy is subject to modification and amendment at the discretion of the Board in accordance with the PAL §2800 and N-PCL §520. The Policy shall be reviewed and approved annually by the Land Bank Board. On or before March 31st of each year, the Policy most recently reviewed and approved including the name of the Contracting Officer shall be filed with the State Comptroller and posted on the Land Bank's website.