



**Department of  
Environmental  
Conservation**

# **Basics of Land Bank/Municipal Agreements regarding Tax Delinquent and Contaminated Properties**

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# DISCLAIMER

The views expressed by the speaker are her opinions alone and do not necessarily represent the position of the NYSDEC or the State of New York.



# Liability

Municipalities or governmental entities with the authority to foreclose on a property are hesitant (with good reason) to foreclose on a contaminated property.

## Why?

- Owner in the chain of title
  - Responsible for remediation – potential DEC enforcement
- Can't resell the property



# Purpose & Main Components

Shared interest in ensuring that environmental issues do not interfere with the return of properties to the tax rolls and to productive use. Agreements can protect the public health and environment while reducing blight. Three main components:

- 1) Information Sharing/Cooperation
- 2) Covenant Not to Sue/Cost-sharing
- 3) Path to Access, Cleanup, and Redevelopment



# Applicability – Tax Delinquent

- Abandoned
  - Potentially contaminated – owner “walked away”
  - Bankruptcy
  - Disclaimed inheritance
- Contaminated properties
- Properties where land owners are using potential environmental contamination to avoid threat of foreclosure

# Covenant Not to Sue – Addresses Liability Concerns

- DEC/Oil Spill Fund covenant-not-to-sue or seek payment as RP under CERCLA, State Superfund, Navigation Law, with caveats:
  - County/Land Bank in chain of title to a property pursuant to its *sovereign functions* (taxes, abandonment) – cannot be purchased under business purpose
  - CANNOT own/operate/manage during *disposal, release, discharge or spill*
  - CANNOT cause or contribute release or threat of release
  - Must exercise “appropriate care” with respect to existing contamination (stop continuing release/passive migration, prevent exposure)
- County/Landbank does not need to remediate previously released contamination during brief ownership



# Cost Sharing

Upon sale of property to a new buyer/developer:

- 1) Split proportionally from net proceeds of a sale based on costs incurred by each party
  - 2) DEC – guaranteed \$1,000 (if expend funds)
  - 3) OSC - guaranteed \$1,000 (if expend funds)
  - 4) Land Bank/County keeps remainder (if seller)
- DEC/OSC will not seek recovery of past costs against County/Land Bank
  - Successors in title (new buyer) remain liable for costs incurred by State



# Paths to Cleanup and Redevelopment

- Municipality can sell to a Buyer who can enter remedial program with DEC (likely brownfield cleanup program) and will provide an environmental easement, if required by DEC
- Municipality can complete Phase 1 or Phase 2
  - Clear “cloud” or identify remedial path
  - If all goes well, property is back on the tax rolls and is available for its best use



# Thank You

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