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**LAND BANKS IN MISSOURI:  
A COMPARATIVE ANALYSIS OF STATUTORY SCHEMES IN  
KANSAS CITY AND ST. LOUIS**

Yelena Bosovik\*

I. INTRODUCTION

The housing and financial crisis of 2008 may be behind us, but a drive through any community, especially large urban areas, reveals too many boarded up buildings and abandoned properties littering an otherwise prosperous horizon. For many municipalities, the solution has been to create land banks to take possession of tax-delinquent properties and to sell them, with clean titles, for redevelopment or public use.

This paper begins with a brief overview of the evolution of land banks, and a discussion on Missouri's two land banks, one in Kansas City, and another one in the city of St. Louis. At the crux of this discussion is Missouri's tax foreclosure process, which is intricately tied to how a land bank obtains its inventory. The bulk of the paper focuses on how to solve

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the growing problem of blighted properties in the county of St. Louis. Specifically, the recommendations propose statutory language that, if a land bank is established in St. Louis County, would allow the land bank to efficiently transfer abandoned and vacant properties into productive use.

## II. HISTORY OF LAND BANKS

Land banks developed in three distinct phases, often referred to as “generations.”<sup>1</sup> It all began with finding a way to deal with properties “‘stuck’ in complex property tax enforcement systems.”<sup>2</sup> The first land bank was established in St. Louis in 1971, followed shortly after by Cleveland, Ohio.<sup>3</sup> More than a decade later, Louisville and Atlanta also created land banks.<sup>4</sup> Despite their identical focus to address abandoned, tax-delinquent properties, each of these four original land banks varied greatly in legal structure due to state constitutional restraints.<sup>5</sup> Nonetheless, the statutory authority was primarily consistent across the four jurisdictions. Operational authority was vested with local governments, allowing land banks to gather up residual inventory of

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<sup>1</sup> FRANK S. ALEXANDER, *LAND BANKS AND LAND BANKING*, 18 (2d ed. 2015).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 19.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

foreclosed, tax-delinquent properties and to dispose of them pertaining to locally determined priorities.<sup>6</sup> Although each of these first generation land banks transferred between 100 to 500 parcels of property each year, they primarily operated without an internal funding structure.<sup>7</sup> Furthermore, property tax foreclosure laws were not amended, severely restricting the land banks' ability to get marketable and insurable titles for properties, and often tying up proceedings in lengthy administrative procedures that delayed transfer of ownership.<sup>8</sup>

The second generation brought about much needed legislative reform as Michigan introduced reformed property tax foreclosure laws in 1999, followed by the establishment of a land bank in Genesee County in 2002.<sup>9</sup> The hallmarks of the new legislations featured the creation of a judicial tax foreclosure process, the opportunity to bulk a county's entire inventory of tax delinquent properties into a single foreclosure proceeding, and the prohibition of selling tax liens to private third parties.<sup>10</sup> As a result, land banks could acquire all tax-foreclosed properties, including

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 20.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

insurable and marketable titles, ready for reuse and redevelopment.<sup>11</sup> On the heels of Michigan's success, Ohio passed its own legislative reform in 2008.<sup>12</sup> To fund a land bank's operation, the legislation internalized interest and penalties on delinquent taxes, which consequently authorized land banks to be involved in every step of a property's transformation.<sup>13</sup>

The third generation of land banks has been evolving over the last five years.<sup>14</sup> Determined to simplify Michigan's otherwise successful land bank legislation, almost a dozen states have taken on land bank reform in the last three years.<sup>15</sup> Where Michigan's legislation packaged different bills and amended existing state laws, the current trend has been to rely on template legislation of a single land bank bill.<sup>16</sup>

In 2008, Congress passed the Housing and Economic Recovery Act of 2008 ("HERA"), the first federal legislation to expressly recognize land banking. HERA appropriated \$4 billion for the redevelopment of abandoned and foreclosed properties, which eventually became known as

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<sup>11</sup> *Id.* at 21.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* "New York (2011), Georgia (2012), Missouri (2012), Pennsylvania (2012), Tennessee (2012), Nebraska (2013), Alabama (2013), and West Virginia (2014)." *Id.*

<sup>16</sup> *Id.* at 22; *see also* Appendix D *infra*.

the Neighborhood Stabilization Program (“NSP”).<sup>17</sup> In 2009, Congress allocated an additional \$2 billion in funding to the NSP.<sup>18</sup>

### III. THE CURRENT STATE OF LAND BANKS IN MISSOURI

In 2012, the Missouri legislature authorized the establishment of land banks by ordinance or resolution. However, the only municipalities permitted to create a land bank are those in which a land trust was operating in as of January 1, 2012.<sup>19</sup> There is only one established land bank in Missouri, the Land Bank of Kansas City. However, the St. Louis Land Reutilization Authority performs a lot of the same functions in the city of St. Louis that a land bank does, and is often characterized as a land bank agency.

Section 141.700.1 of the Missouri Revised Statutes authorizes a land bank to manage, sell, and otherwise dispose of real estate acquired through foreclosure of a lien for delinquent real estate taxes.<sup>20</sup> Under Section 141.980, a land bank agency must meet the following requirements:

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<sup>17</sup> *Id.* at 23.

<sup>18</sup> *Id.* at 24.

<sup>19</sup> MO. REV. STAT. § 141.980.1 (Cum. Supp. 2012).

<sup>20</sup> MO. REV. STAT. § 141.700.1 (2000).

1. created to foster the public purpose of returning land;
2. owned real estate must be wholly located in the establishing municipality;
3. sell no more than five contiguous parcels to the same entity in the course of year;<sup>21</sup> and
4. be a public body – corporate and politic – and have permanent and perpetual duration.<sup>22</sup>

A land bank in Missouri may “acquire property or interests in property by gift, devise, transfer, exchange, foreclosure, lease, purchase, or otherwise on terms and conditions and in a manner the land bank agency considers proper.”<sup>23</sup>

#### A. *Kansas City*

Established in 2012, the Land Bank of Kansas City possesses over 5,000 properties for sale in Kansas City.<sup>24</sup> The Land Bank of Kansas City currently offers three programs: (1) the Side Lot Program, (2) vacant lots and land, and (3) the adopt/lease program.<sup>25</sup> The land bank sells its properties for either fair market value or the appraised value determined by: (1) the market value estimated by the County Assessor; (2) a set value for unimproved vacant residentially zoned parcels in the area, based on

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<sup>21</sup> § 141.980.1 (Cum. Supp. 2012).

<sup>22</sup> § 141.980.3.

<sup>23</sup> § 141.984.3.

<sup>24</sup> LAND BANK OF KANSAS CITY, <http://www.kcmolandbank.org> (last visited June 19, 2017).

<sup>25</sup> *Id.*

square footage and market conditions for a specific property: (3) land bank or city staff input, based on appraisals or valuation obtained for municipal purposes; (4) a real estate broker's sale price summary of comparable properties; or (5) an appraisal done by a licensed appraiser hired by the purchaser.<sup>26</sup> The price tag may be reduced if there are more than five properties owned by the land bank on a single city block and no written purchase offer was submitted within the twelve months.<sup>27</sup>

The statute authorizing the creation of the Land Bank of Kansas City was introduced in the 96<sup>th</sup> General Assembly on February 6, 2012 as Missouri House Bill 1659.<sup>28</sup> Adding to existing law, the proposed bill stated that should a dispute arise over the value of a property, land banks were to be given discretion to determine bid values, so that a land bank was not required, unlike other private purchasers, to provide testimony as

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<sup>26</sup> *Policies and Procedures*, KANSAS CITY LAND BANK (May 4, 2016, 9:56 AM), <http://www.kcmolandbank.org/policies-procedures.html>.

<sup>27</sup> *Id.*

<sup>28</sup> In 2011, the Missouri legislature tried to pass similar legislation establishing a land bank in Kansas City. *HB 1659*, OPEN STATES (Feb. 6, 2017), <https://openstates.org/mo/bills/2012/HB1659/>. However, after passing the House, the bill died in Senate. A key objection to the first bill was the provision that would have allowed the land bank to buy tax-delinquent properties ahead of tax sales – shutting out private investors before they had a chance to bid. This provision did not make it into subsequent land bank legislation, including H.B./S.B. 1659 which eventually did establish the Land Bank of Kansas City.



to the reasonable value of the property. In addition, a provision was added specifying that of the three required members of a land trust, one of the members must be appointed by the county, and if an appointing authority fails to make an appointment of a land trustee, then the appointment authority defaults to the county, not the municipality. It was at this point that the draft language of the current sections 141.980 to 141.1015, substantially in the same format, was added to existing law.

The International Trade and Job Creation Committee of the Missouri legislature heard testimony pertaining to the proposed legislation. Supporters of the bill claimed that Kansas City was experiencing a large number of mortgage foreclosures and that a land bank system would help rehabilitate and redevelop vacant, decrepit homes that were driving down property values and presenting health and safety issues.<sup>29</sup> Although no opposition to the bill was voiced, a representative of the Show-Me Institute testified that based on the track record of the St. Louis Land Reutilization Authority, a land bank with generous statutory power is insufficient and contrary to the entire purpose behind establishing

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<sup>29</sup> INT'L TRADE AND JOB CREATION COMM. REP., H.B. 1659 (2012).

land banks.<sup>30</sup> Specifically, the Institute was concerned that the costs incurred by the city in maintaining properties did not go away when a property was acquired by the land bank.<sup>31</sup> Nonetheless, the House Committee voted 13 to 0 to pass the proposed bill. After passing unanimously in the House, the bill moved on to the Missouri Senate.

The Senate Ways and Means Committee proceeded to further amend the bill. For example, the committee's report specifically stated that the all property held by a land trust within Kansas City was to be transferred to the land bank, within one year of the creation of the land bank.<sup>32</sup> The senate committee's version of the bill also specified that if a land bank bids at a tax foreclosure sale, in an amount that equals the amount of the tax liens, plus interest and costs, the land bank may be sold the property.<sup>33</sup> Furthermore, if a property inside Kansas City was offered for sale at three different tax sales and not sold, it was to be automatically transferred to the land bank.<sup>34</sup> Finally, assumingly to further the land

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Mo. St. S., S. Comm. Sub. 1659, 2d Sess. (Mo. 2012), [http://www.senate.mo.gov/12info/BTS\\_Web/Summary.aspx?SessionType=R&BillID=3780846&SummaryID=8785142](http://www.senate.mo.gov/12info/BTS_Web/Summary.aspx?SessionType=R&BillID=3780846&SummaryID=8785142) (last visited June 19, 2017).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

bank's rehabilitation purpose, the bill proposed to limit the land bank's ability to make certain bids at a sheriff's foreclosure sale to bidding only on properties located within a low to moderate income area designated as a target area for revitalization by the municipality that created the land bank agency.<sup>35</sup>

These added amendments brought out further concerns from the Show-Me Institute. In testimony before the Missouri Senate Financial and Governmental Organizations and Elections Committee on Senate Bill 795,<sup>36</sup> a representative of the Show-Me Institute stated that giving the Land Bank of Kansas City the ability to issue bonds and take on other forms of debt<sup>37</sup> creates a risk that the land bank will never be able to close, since the land bank's incurred debt does not count towards the debt limit of Kansas City.<sup>38</sup> Nonetheless, the final version of the bill kept the language authorizing the land bank's board, with a majority vote, to incur

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<sup>35</sup> *Id.*

<sup>36</sup> S.B. 795 96th Gen. Assemb. 2d Reg. Sess. (Mo. 2012). After successfully being passed in the House, the bill was introduced to the Missouri State Senate on February 16, 2012, but it died in chamber. *Id.* The subsequent version of S. 1659 had identical language. *Id.*

<sup>37</sup> *Id.*; S. 795 stated that the land bank may incur "debt, including, without limitation, borrowing of money and issuance of bonds, notes or other obligations..." *Id.*

<sup>38</sup> *Hearing on S. 795 Before the S. Comm. on Financial and Governmental Organizations and Elections* (2012) (statement of Audrey Spalding, Show-Me Institute).

debt without limitation.<sup>39</sup> The Institute's next concern was that the land bank would be allowed to bid against other potential buyers at tax auctions.<sup>40</sup> With the land bank's essentially unlimited funds, the land bank could easily outbid private buyers, essentially defeating the entire point of ultimately getting as much foreclosed property into private hands for rehabilitation as possible.<sup>41</sup>

Furthermore, at the time the Land Bank of Kansas City was established, Kansas City already had an established agency to take ownership of and sell tax-delinquent properties that failed to sell at auction – the Jackson County Land Trust. According to the Show-Me Institute, the Jackson County Land Trust was doing an excellent job fulfilling its purpose, and as such, there was not need to establish a land bank to replace the land trust.<sup>42</sup> However, at the time legislation was being pushed through to establish the Land Bank of Kansas City, the Jackson County Land Trust held approximately 3,226 properties, 60% of which had been

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<sup>39</sup> MO. REV. STAT. § 141.981.6(3) (Cum. Supp. 2012),

<http://www.house.mo.gov/billtracking/bills121/billpdf/truly/HB1659T.PDF>.

<sup>40</sup> *Hearing on S. 795 Before the S. Comm. on Financial and Governmental Organizations and Elections*, *supra* note 38.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

held for more than a decade.<sup>43</sup> According to the then-Commissioner of the Land Trust, the Land Trust rules required property sales to bring in at least two thirds of the assessed value of each parcel, a difficult standard to accomplish since, as a result, many properties sat empty for years.<sup>44</sup>

Finally, the Land Bank of Kansas City was given the discretion to accept or reject bids on its properties based on whether the proffered bid met the land bank's subjective determination of the proposed use for the building. According to the Show-Me Institute, giving the land bank the authority to rank priorities and discriminate among buyers is not consistent with a land bank's purpose and is inefficient. The final version of the bill nonetheless conferred all these powers to the Land Bank of Kansas City.

#### B. *St. Louis*

Since the establishment of the St. Louis Land Reutilization Authority ("LRA"), the city of St. Louis has accumulated more than 11,000 parcels of real estate, including residential houses, vacant lots,

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<sup>43</sup> Jason Hancock & Mike Hendricks, *Land Bank Proposed to Help KC's Urban Blight*, THE KANSAS CITY STAR (Feb. 15, 2012), <http://www.kansascity.com/news/local/article301005/Land-bank-proposed-to-help-KCs-urban-blight.html>.

<sup>44</sup> *Id.*

commercial buildings and even a 30-acre cemetery.<sup>45</sup> The agency groups its properties into three categories: (1) suitable for private use; (2) suitable for use by a public agency; or (3) not usable in its present condition or situation and held as a public land reserve.<sup>46</sup> Properties in the first category must be sold as close as possible to their appraised value.<sup>47</sup> Properties in the second category may be transferred to a public agency at no cost, except for any administrative costs associated with the transfer.<sup>48</sup> If the public agency sells or otherwise disposes of the property within ten years, such proceeds must be returned to the LRA.<sup>49</sup> For the third category of properties, the LRA must assess the properties annually to determine if the property should be re-classified.<sup>50</sup>

LRA was funded by the Department of Housing and Urban Development and the Community Development Administration, under Title I of the Housing and Community Development Act of 1974, and

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<sup>45</sup> Tim Logan, *City's Land Plan has Successes, Shortcomings*, ST. LOUIS POST DISPATCH (Feb. 25, 2012), [http://www.stltoday.com/business/local/city-s-land-plan-has-successes-shortcomings/article\\_cb0f6e66-5f09-11e1-94ca-001a4bcf6878.html](http://www.stltoday.com/business/local/city-s-land-plan-has-successes-shortcomings/article_cb0f6e66-5f09-11e1-94ca-001a4bcf6878.html).

<sup>46</sup> MO. REV. STAT. § 92.900.2 (2000).

<sup>47</sup> § 92.900.3.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> § 92.900.

Title II of the National Affordable Housing Act of 1990.<sup>51</sup> The agency has authority to manage, maintain, market, and sell agency-owned vacant and abandoned buildings and property.<sup>52</sup> Unlike the Land Bank of Kansas City, which was organized under Section 141.700 of the Missouri Revised Statutes, the St. Louis LRA derives its authority under Sections 67.974 and 92.875.

Missouri's land reutilization statute authorizes the establishment of an agency to manage, sell, transfer, and otherwise dispose of tax delinquent lands. Generally, redevelopment authorities, including the St. Louis LRA, have additional powers that land banks do not, particularly the

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<sup>51</sup> *Real Estate Development*, ST. LOUIS-MO.GOV, <https://www.stlouis-mo.gov/government/departments/slhc/real-estate/> (last visited June 19, 2017).

<sup>52</sup> § 92.875. "There is hereby created an authority for the management, sale, transfer and other disposition of tax delinquent lands, which authority shall be known as 'The Land Reutilization Authority of the city of . . . . , Missouri.' It shall have authority to accept the grant of any interest in real property made to it, or to accept gifts and grant in aid assistance. Such authority shall have and exercise all the powers conferred by the provisions of sections 92.700 to 92.920 necessary and incidental to the effective management, sale, transfer or other disposition of real estate acquired under and by virtue of the foreclosure of the lien for delinquent real estate taxes, as provided in sections 92.700 to 92.920, and in the exercise of such powers, the land reutilization authority shall be deemed to be a public corporation acting in a governmental capacity. (2) The land reutilization authority is hereby created to foster the public purpose of returning land which is in a nonrevenue generating nontax producing status, to effective utilization in order to provide housing, new industry, and jobs for the citizens of any city operating under the provisions of sections 92.700 to 92.920 and new tax revenues for said city." *Id.*

power of eminent domain and taxing authority.<sup>53</sup> Land banks and revitalization authorities also often have different purposes. Land banks tend to focus on acquiring, stabilizing and returning to product properties that are considered to have the most blighting influence in the community, even if the properties do not have immediate redevelopment opportunities. On the other hand, land redevelopment authorities focus on properties with near-term redevelopment potential and on large scale development projects with highly visible and long-term economic development goals.<sup>54</sup>

However, the LRA does not work alone. Instead, the St. Louis LRA partners with the Land Clearance for Redevelopment Authority (“LCRA”)<sup>55</sup> and the Planned Industrial Expansion Authority (“PIEA”).<sup>56</sup>

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<sup>53</sup> *Frequently Asked Questions on Land Banking*, CENTER FOR COMMUNITY PROGRESS, <http://www.communityprogress.net/land-banking-faq-pages-449.php#What%20does%20a%20typical%20land%20bank%20program%20look%20like> (last visited June 19, 2017).

<sup>54</sup> *Id.*

<sup>55</sup> The Land Clearance for Redevelopment Authority consists of a five-member board and support staff that oversees various aspects of real estate development in the City of St. Louis. Primarily, the LCRA reviews development proposals that include requests for public assistance in the form of tax abatement or tax-exempt revenue bonds. *Land Clearance for Redevelopment Authority*, STLOUIS-MO.GOV, <https://www.stlouis-mo.gov/government/departments/sldc/boards/Land-Clearance-for-Redevelopment-Authority.cfm> (last visited June 19, 2017).

<sup>56</sup> The Planned Industrial Expansion Authority implements incentives for development of areas designated under Chapter 100 by the Board of Aldermen. These incentives include real estate tax abatement and property acquisition, relocation and planning assistance through the use of federal, local, state, or private funds. *Planned Industrial Expansion*



LRA receives properties in three ways: (1) donations; (2) as the “default owner of last resort” following tax delinquency foreclosure proceedings; and (3) by affirmative acquisition for specific developments through negotiated sales or eminent domain.<sup>57</sup>

In the past two decades, the LRA has faced multiple allegations that it was improperly yielding its extensive powers and not fulfilling its purpose as statutory defined. In December 2013, the Show-Me Institute published a study on the LRA, alleging that the agency was holding on to too many properties for too long by rejecting offers or pricing properties too high.<sup>58</sup> Specifically, the LRA held 85% of its total inventory in 2010 and 84% in 2012.<sup>59</sup> This was partially due to the fact that between 2003 and 2010, the LRA accepted only 24% of offers made on its properties, which increased to 40 and 85%, respectively, in 2011 and 2012.<sup>60</sup> Part of

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*Authority*, STLOUIS-MO.GOV, <https://www.stlouis-mo.gov/government/departments/slhc/boards/Planned-Industrial-Expansion-Authority.cfm> (last visited June 19, 2017).

<sup>57</sup> Lyn E. Haralson, *Land Banks Restore Neighborhoods...Building by Building, Lot by Lot*, FEDERAL RESERVE BANK OF ST. LOUIS (May 4, 2016, 10:12 AM), <https://www.stlouisfed.org/publications/bridges/fall-2005/land-banks-restore-neighborhoodsbuiding-by-building-lot-by-lot>.

<sup>58</sup> See Haleigh Albers, *Promoting Private Land Ownership in Saint Louis: A Data Update On The Land Reutilization Authority*, SHOW-ME INSTITUTE (Dec. 2013).

<sup>59</sup> *Id.* at 3.

<sup>60</sup> *Id.* at 4.

the reason the LRA's offer acceptance rate more than doubled within the span of a year is that the LRA began to make counteroffers instead of just outright rejecting bids.<sup>61</sup> The LRA has two different types of counteroffers: (1) countering with contingencies, which accepts the offer but gives the option to pay over a set period of time instead of up front, and (2) countering with a higher price than the purchaser's offered price.<sup>62</sup> According to the Show-Me Institute, the LRA's greatest room for improvement is in pricing properties to reflect the real market values and to consider accepting a larger share of formal offers.<sup>63</sup> Doing so would further the LRA's purpose to transfer properties into productive use.<sup>64</sup>

### C. *Missouri Tax Foreclosure Process*

A state's tax foreclosure process is directly linked to a land bank's success. The most effective way to connect a state's foreclosure laws to benefit land banks is to rely on judicial proceedings.<sup>65</sup> A judicially supervised and approved tax foreclosure provides the best guarantee that a property will have an insurable title – a fundamental prerequisite for future

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<sup>61</sup> *Id.* at 5.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 10.

<sup>64</sup> *Id.*

<sup>65</sup> ALEXANDER, *supra* note 1, at 29.

development of the property.<sup>66</sup> Currently, there are three categories of tax sales procedures in Missouri: (1) general delinquent tax statutes under Chapter 140 of the Missouri Revised Statutes, (2) counties electing to operate under Chapter 141 of the Missouri Revised Statutes, and (3) the Land Reutilization Act of St. Louis City.

Generally, tax sales are non-judicial under Chapter 140, initially known as the Jones-Munger Act.<sup>67</sup> Assuming sufficient notice has been given to the owners of record,<sup>68</sup> the county may attempt to sell these tax delinquent properties within three years.<sup>69</sup> The minimum required bid must be equal to the sum of the delinquent taxes, interest, and any applicable penalty and costs provided by law.<sup>70</sup> There is also a 90-day redemption period; legal title does not vest in the purchaser until the

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<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> MO. REV. STAT. § 140.150 (Cum. Supp. 2013). Under Chapter 140, the county collector is required to send by first class mail notice to the publicly recorded owner before making publishing anything publicly. If the property is valued at more than \$1,000 then a second notice shall be sent by certified mail. If the second notice is sent by unsigned, the notice shall be sent again by first class mail to the owner of record and to the occupants of the property. However, not receiving the notice does not relieve that taxpayer of any tax liability. In addition, the county collector is required to publish a list of delinquent lands and lots in a newspaper of general circulation, for three consecutive weeks leading up to the foreclosure sale on the fourth Monday in August. *Id.*

<sup>69</sup> § 141.250.1; § 140.160.

<sup>70</sup> § 140.250.1.

period of redemption has lapsed.<sup>71</sup> If a property is not sold after three attempts, then the county collector, in his discretion, need not again offer the property for sale more often than once every five years.<sup>72</sup> The minimum required bid price still must be equal to the sum of the delinquent taxes, interest, and any applicable penalty and costs provided by law.<sup>73</sup> However, if a property is sold after the third offering, there is no redemption period.<sup>74</sup>

Chapter 140 also has a special provision allowing any county commissioner, and a designated official of the city of St. Louis, to appoint a person to bid at tax foreclosure sales, and to purchase properties with delinquent taxes at a public auction in order to preserve the county's right to collect unpaid taxes.<sup>75</sup> The trustee is not required to pay the mandatory bid amount, but the collector's deed must list the delinquent taxes for the property sold, and that the deed to the property is held in trust for the use and benefit of the fund(s) entitled to the payment of the taxes on the

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<sup>71</sup> *Id.* The requirements for what must be accomplished during this 90-day period are provided for in MO. REV. STAT. § 140.405 (Cum. Supp. 2015). Primarily, it includes sending out notices to anyone who may have a claim or lien to the property. *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> MO. REV. STAT. § 140.250.1 (Cum. Supp. 2010).

<sup>74</sup> § 140.250.4.

<sup>75</sup> § 140.260.

property.<sup>76</sup> If a county fails to appoint a trustee or the trustee, after the third offering, does not bid and no sale occurs, then the county collector may sell the land or property at any time and for any amount.<sup>77</sup>

Counties that operate under Chapter 141 include St. Louis City and first class counties.<sup>78</sup> Like Chapter 140 foreclosures, if a real estate parcel has delinquent taxes for three years, the property faces a foreclosure sale to recover back taxes.<sup>79</sup> However, under Chapter 141, first class counties must first file a lawsuit seeking judgment of foreclosure for unpaid delinquent taxes as of January 1 of each year.<sup>80</sup> After a tax judgment has been rendered, the property may not be sold for two years, as to give the property owner time to pay the amount of the judgment.<sup>81</sup> Once a property is up for tax sale, the county sheriff must obtain judicial approval by reporting the sale and the amount of a bid to the court.<sup>82</sup> The court then

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<sup>76</sup> § 140.260.3.

<sup>77</sup> § 140.260.8.

<sup>78</sup> Generally, first class counties are counties assessed at a value of \$900 million or more. MO. REV. STAT. § 48.020.1 (2000). As of January 2017, the class one counties included: Boone, Buchanan, Callaway, Camden, Cape Girardeau, Cass, Christian, Clay, Cole, Franklin, Greene, Jackson, Jasper, Jefferson, Platte, St. Charles, St. Francois, St. Louis and Taney. *County Classifications in the State of Missouri*, MO. ASSOC. OF COUNTIES, <http://www.mocounties.com/county-classifications.php> (last visited June 19, 2017).

<sup>79</sup> MO. REV. STAT. § 141.080 (2000).

<sup>80</sup> § 141.040.

<sup>81</sup> § 141.120.

<sup>82</sup> § 141.130.1.

appoints two appraisers to determine the value of the property.<sup>83</sup> To be approved, a bid must exceed 50% of the property's appraised value.<sup>84</sup> However, if a bid is less than 50% of the appraised value, then the bid may still be approved if adding the delinquent taxes to the bid brings the amount above the 50% threshold.<sup>85</sup> Along with private buyers, counties and the City of St. Louis also have the statutory authority to bid on properties that are put up for sale a third time for delinquent taxes.<sup>86</sup> However, if a property remains unsold after being offered for sale on three separate occasions, the local land bank is deemed to have bid the full amount of all tax bill as a credit bid.<sup>87</sup> The full bid amount includes the principal amount of unpaid taxes, interest, penalties, attorney's fees, and other costs.<sup>88</sup>

It is important to note that counties with charter governments can elect to follow either Chapter 140 proceedings or specially crafted exceptions just for charter counties under Chapter 141.<sup>89</sup> As of January

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<sup>83</sup> *Id.*

<sup>84</sup> § 141.130.2.

<sup>85</sup> § 141.130.3.

<sup>86</sup> MO. REV. STAT. § 140.260 (Cum. Supp. 2010).

<sup>87</sup> MO. REV. STAT. § 141.560.3 (Cum. Supp. 2012).

<sup>88</sup> *Id.*

<sup>89</sup> MO. REV. STAT. § 141.160 (Cum. Supp. 2009).

2016, first class charter counties include Jackson, Jefferson, St. Charles, and St. Louis counties.<sup>90</sup> For example, one such exception gives first class charter counties the authority to establish a land bank to manage, sell, and dispose of real estate acquired through the tax foreclosure process.<sup>91</sup> This is the statute from which the Land Bank of Kansas City draws its authority from, since Jackson County is one of the counties with a charter government.

Under the LRA, when a property owner fails to pay taxes for five years, the City's Collector of Revenue may sue and foreclose on a property.<sup>92</sup> The foreclosure petition asks the court to determine the amount and priorities of all tax bills and for an order to sell the property at a public sale.<sup>93</sup> A property with delinquent taxes attached to it may be redeemed by the owner of record or any other person interested in the property for the amount equal to the outstanding taxes, interest from the date of

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<sup>90</sup> Charlie Harrison, *Missouri Counties By Classification*, MISSOURI COUNTIES (Jan. 2016), [http://www.mocounties.com/images/1282/document/2016-classification\\_821.pdf](http://www.mocounties.com/images/1282/document/2016-classification_821.pdf).

<sup>91</sup> MO. REV. STAT. § 141.700 (2000).

<sup>92</sup> *City of St. Louis Selected to Leadership Institute's Best Practices on Tackling Vacant and Problem Properties*, ST. LOUIS-MO.GOV (Mar. 16, 2015), <https://www.stlouis-mo.gov/government/departments/mayor/news/tackling-vacant-and-problem-properties.cfm>.

<sup>93</sup> § 92.740.

delinquency at the rate of 2% per month, and cost.<sup>94</sup> However, after a court issues a judgment of foreclosure, there is a mandatory six-month waiting period before a property can be advertised for a sheriff's sale.<sup>95</sup> This grace period is given as an opportunity for the property owner to redeem the property or at least to set a plan of redemption in motion.<sup>96</sup> If no such action is taken within the six months, the sheriff may set a sale date within 30 days of the first published notice of the sale.<sup>97</sup> Each sale must be confirmed by the court, which looks to whether adequate consideration has been paid.<sup>98</sup>

In addition to being sold at auction, foreclosed properties may face other fates. For example, if a property is determined to be of "substandard quality or condition under the standards established by the residential loan commission," the property is to be transferred to the residential loan commission for renovation.<sup>99</sup> The commission then has the right to sell the property, but must reimburse the LRA for all expenses directly incurred in

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<sup>94</sup> MO. REV. STAT. § 92.715 (Cum. Supp. 2010).

<sup>95</sup> MO. REV. STAT. § 92.810.1 (2000).

<sup>96</sup> § 92.810.2.

<sup>97</sup> *Id.*

<sup>98</sup> § 92.840.2.

<sup>99</sup> § 92.810.4.



relation to the property prior to the transfer.<sup>100</sup> Furthermore, if no sufficient bid is received at a public sale, the LRA is deemed to have bid the full amount, including outstanding taxes, interest, penalties, and any attorney’s fees and costs due.<sup>101</sup>

D. *Comparative Summary of Missouri Tax Foreclosure Statutes*

	<b>Chapter 140</b>	<b>Chapter 141</b>	<b>Land Reutilization Act</b>
Governs	General delinquent tax foreclosure process	St. Louis City and first class counties	St. Louis City
Land bank	N/A	Land Bank of Kansas City	St. Louis Land Reutilization Authority
Judicial vs. non-judicial	Non-judicial	Judicial	Judicial
Timing (when a property may be sold)	3 years + 90 day redemption period after a sale	3 years + 2 year redemption period	5 years
Minimum bid	Delinquent taxes, interest, penalties, and other applicable costs	> 50% of the property’s appraised value	Delinquent taxes, interest from the date of delinquency at the rate of 2% per month, and other costs

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<sup>100</sup> *Id.*

<sup>101</sup> § 92.830.

Special authority for land banks	n/a	If a property is not sold after three attempts, the local land bank is deemed to have bid the full amount of all tax bill as a credit bid.	If no sufficient bid is received at a public sale, the property is transferred to the LRA.
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#### IV. MODEL LAND BANK LEGISLATION

According to the Center for Community Progress, a leading organization on land banks, a successful land bank program should exhibit the following five characteristics: (1) strategic links to the tax collection and foreclosure process; (2) operations scaled in response to local land use goals; (3) policy-driven, transparent, and publicly accountable transactions; (4) engagement with residents and other community stakeholders; and (5) alignment with other local or regional tools and community programs.<sup>102</sup> To achieve these characteristics, state legislation should grant land banks, at a minimum, the power to (1) obtain property low or no cost through tax foreclosure, (2) hold land tax-free, (3) clear title and/or extinguish back taxes, (4) lease properties for temporary uses, and

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<sup>102</sup> Frequently Asked Questions on Land Banking, *supra* note 53.

(5) negotiate sales based not only on the highest bid but also on the outcome that most closely aligns with community needs, such as workforce housing, a grocery store, or green space.<sup>103</sup>

#### A. *Recommendations*

Currently, Missouri has a strong foundation for utilizing land banks as a vehicle of moving abandoned and/or foreclosed properties into productive use. However, with just a few small tweaks and additional powers, land banks in Missouri could operate much more efficiently.

##### 1. *St. Louis City vs. St. Louis County*

Despite all this legislation in Missouri on dealing with vacant and tax delinquent properties, counties like St. Louis continue to struggle with blight. At the August 2015 auction in St. Louis count, 885 properties were auctioned at a third offering/sale.<sup>104</sup> Only thirteen of these properties attracted buyers, and the rest were added to the other 1,905 properties on the post-third offering list.<sup>105</sup> The county trustee office holds an additional 624 parcels, most of them without attached structures. The trustee often

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<sup>103</sup> *Id.*

<sup>104</sup> Walker Moskop & Steve Giegerich, *Properties Pile up at St. Louis County Tax Sales*, ST. LOUIS POST-DISPATCH (Feb. 1, 2016), [http://www.stltoday.com/news/local/govt-and-politics/properties-pile-up-at-st-louis-county-tax-sales/article\\_8d87e7aa-6f91-563f-82d7-30caa3c806b3.html](http://www.stltoday.com/news/local/govt-and-politics/properties-pile-up-at-st-louis-county-tax-sales/article_8d87e7aa-6f91-563f-82d7-30caa3c806b3.html).

<sup>105</sup> *Id.*

ends up transferring the properties to local municipalities.<sup>106</sup> All in all, though, in 2015, only 98 properties were sold from *both* of these lists. To make matters more complicated, most of these properties are in St. Louis County, especially in poorer, African-American neighborhoods with older, smaller housing stock.<sup>107</sup> As such, the county should contemplate creating a land bank to allow the county to take possession of the tax-delinquent properties, clear the titles, and then to sell them to redevelop the properties for public use. However, the county has many statutory and political obstacles before it even gets to the logistics of creating and operating a land bank.

First, Missouri law currently only allows any municipality, located within a county where a land trust existed as of January 1, 2012, to create a land bank agency.<sup>108</sup> St. Louis has a land bank that has existed since 1971. Now, the issue arises whether the county of St. Louis can create its own land bank, or if the county must work with the city to expand the St. Louis LRA to include properties foreclosed within the county. Under Section 92.875 of the Missouri Revised Statutes, the jurisdiction seems to

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<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> MO. REV. STAT. § 141.980.1 (Cum. Supp. 2012).

be limited only to the city. Furthermore, for purposes of Chapter 141 of the Missouri Revised Statutes, a “municipality” is defined as:

Any incorporated city or town, or a part thereof, located in whole or in part within a county of class one or located in whole or in part within a county with a charter form of government, which municipality now has or which may hereafter contain a population of two thousand five hundred inhabitants or more, according to the last preceding federal decennial census.

This narrow definition of municipality – explicitly only including cities and towns, but not counties – may cause further conflicts in authority between a city and a county.

In its model land bank legislation, the Center for Community Progress defines “municipality” as any “city, village, town, or country, other than a county located within a city.”<sup>109</sup> This broader definition allows greater flexibility for which local governments can interact with the land banks – from selling or transferring property to entering into contracts with the land bank. However, expanding Missouri’s definition in this case may unnecessarily expand the jurisdictions that can create land banks. To deal with this issue, a separate defined term should be created

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<sup>109</sup> ALEXANDER, *supra* note 1, at Appendix D.

for the creating jurisdiction. The model legislation recommends using either “foreclosing governmental unit” or “land bank jurisdiction.”<sup>110</sup>

In St. Louis, in particular, where a land bank agency has been established within the city for several decades, a tension arises between the city’s and county’s authority to manage the local inventory of vacant, abandoned, and tax-delinquent properties. To address this concern, Section 4 of the model legislation template attempts to generate as much flexibility as possible for local governments to work together in creating and operating land banks.<sup>111</sup> For example, Section 4(b) provides that two or more foreclosing government units can join together to operate a land bank.<sup>112</sup> Granted, Missouri seems to have successfully created a land bank in Kansas City, even with the existence of the Jackson County Land Trust. The political tension between the city of St. Louis and St. Louis County, however, brings obstacles of its own to the table. For example, a common misconception is that the two are interchangeable, when in fact St. Louis City is its own county as well – St. Louis City County. There are 90 cities

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<sup>110</sup> *Id.* at 143.

<sup>111</sup> *Id.* at 144.

<sup>112</sup> *Id.* at 144. “Two or more foreclosing government units may elect to enter into an intergovernmental cooperation agreement that creates a single Land Bank to act on behalf of such foreclosing governmental units, which agreement shall be authorized by and be in accordance with the provisions of Section 4(a) of this Act.” *Id.*

in St. Louis County and each of those has its own political, tax, and other city entities that are completely separate from the City of St. Louis.

To resolve this internal conflict between city and county, the Missouri legislature must first expand the definition of “municipality” under Chapter 141 to “city, village, town, or country, other than a county located within a city.” Although this would give the county of St. Louis partial authority to create a land bank, it is only the beginning. The biggest obstacles come from the tension between St. Louis City and St. Louis County. Even if the language of Section 4(b) is added to Chapter 141 and/or Chapter 92, the fact that St. Louis City is independent of St. Louis County is concerning. Passing new legislation to create a land bank is St. Louis County is limited by Section 141.980.1, which states land banks may only be created in municipalities where a land trust existed as of January 1, 2012. With the current narrow definition of “municipality” under Chapter 141, this rules out the county of St. Louis. Yet, even broadening the definition of municipality may not mean anything if the city of St. Louis refuses to take on even more tax-delinquent properties considering it already has more than 11,000 of its own properties under the LRA’s authority.

## 2. *Scope of a land bank's Authority*

When the Land Bank of Kansas City was established, along with the St. Louis LRA's extensive history, many people were concerned with not giving land banks enough guidance and too much power – a potentially potent combination. For example, for years, the St. Louis LRA was holding on to properties and rejecting otherwise acceptable bids because the agency was focused on long term development goals, allegedly at the cost of a land bank's purpose to get vacant properties back on tax rolls and rehabilitated into productive use as soon as possible. As such, Missouri may consider amending its land bank laws, especially the statutes pertaining to the creation and operation of land banks, to better guide the agencies to focus on transferring vacant and tax delinquent properties into private hands for rehabilitation and development.

One such area of improvement is to codify more flexible, yet specific, guidelines for the bid amounts that land banks can accept. Currently, the established land banks in Missouri sell properties at their appraised value. There are a few issues with this standard though. First, a county assessor's value of a property is rarely the same as market value. Second, generally, appraisals do not rise to the level of a home inspection.



For example, an appraiser may not look into problems with the foundation, furnace, or roofs. As such, investors are scared away by the vandalized and looted properties. To remedy this problem, interested purchasers should be given the option to bring in a third party inspector to determine the cost of bringing the property to code, and that value would then be deducted from the assessed value. Doing so would make the properties more attractive to potential buyers. Conversely, decreasing sale prices also means that its less incoming revenue for land banks. This is a moot issue though when, for example, a land bank like the one in Kansas City, may incur debt, whether by borrowing money or issuing bonds, without limit. Fiscally speaking, this may not be very responsible, but if the ultimate purpose is to transform blighted properties into productive use, then keeping a land bank's revenue in the black is less of a priority then getting vacant properties sold and revitalized.

To make matters worse, the properties that face the worst vandalism and looting often accumulate in areas that are already poor. In St. Louis County, one such area is Castle Point, where more than 160

properties have remained unwanted after three tax sales.<sup>113</sup> As such, it might take incentives such as bulk sales to a private buyer or partnerships between government and private entities to truly make an impact on blighted areas. However, under Chapter 141, there is not statutory authority to conduct bulk tax foreclosures. As such, if a land bank is established in St. Louis County, it should have the authority to sell land in bulk to interested buyers.

### 3. *Improving the tax Foreclosure Process*

Finally, like most states, Missouri's tax foreclosure laws are stilted in favor of protecting property owners from losing their homes. Although a noble concept, these laws may hinder a land bank's efficiency. As such, the Center for Community Progress recommends that tax foreclosure laws should be reformed to focus on *in rem* foreclosures.<sup>114</sup> Otherwise known as proceedings against properties, *in rem* foreclosure actions requires adequate notice to all owners with interests in the property, but not that the court obtain complete jurisdiction over the owners themselves.<sup>115</sup> Furthermore, judicial *in rem* proceedings may allow a local government to

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<sup>113</sup> Moskop, *supra* note 104.

<sup>114</sup> ALEXANDER, *supra* note 1, at 35.

<sup>115</sup> *Id.*

process hundreds of parcels in a single hearing.<sup>116</sup> Missouri currently has *in rem* foreclosure proceedings, which is a strong foundation. However, more must be done to streamline the process for exceptional circumstances – like when a property is tax delinquent and a public nuisance – Missouri may consider adding legislation that allows for expedited or emergency foreclosure proceedings.<sup>117</sup>

Timing is an important factor for fulfilling a land bank's purpose. Unfortunately, under the Land Reutilization Act, authorities have five years to commence a foreclosure sale on a property with delinquent taxes.<sup>118</sup> On one hand, this gives property owners plenty of time to pay back taxes and redeem their property. On the other hand, if the property owner has permanently abandoned the property, or otherwise fails to maintain it, the property can remain unattended or in subpar condition for at least five years until it is put up for sale at a public tax foreclosure auction. To further delay the process, when the foreclosure process begins, a court must first determine the sale price and issue an order of sale. After such judgment is issued, there is a mandatory six-month redemption

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<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 18.

<sup>118</sup> MO. REV. STAT. § 92.720.5 (2000).

period before a property can be advertised for a sheriff's sale. Furthermore, when a property is sold, the court must still confirm the sale to determine whether adequate consideration has been paid. Thus, even if the sale process begins within five years of the initial delinquency, with all the subsequent requirements, including any appeals to the court's judgment, it may take at least six years, if not more, before a property is sold to a private third party or transferred to a land bank. Once the property is transferred to the land bank, it may sit there indefinitely until an appropriate bid is made and approved. All in all, it is feasible for a property to remain unattended for at least a decade, if not longer.

One way to improve this process is to create an exception for properties that are clearly abandoned and vacant. The long and tedious tax foreclosure process is partially to protect property owners' rights. The concept of notice in the tax foreclosure process has been highly litigated and controversial over the years. As a result, the Missouri tax foreclosure process is heavily in favor of the taxpayer. But what about the properties that a taxpayer has clearly abandoned or shows no interest in properly maintaining? Waiting five years, like under the Land Reutilization Act, before selling such property at a public tax auction only worsens the

problem. Even when a property is sold though, all of the tax foreclosure statutes require a property to be attempted to be sold on three different occasions – usually these sales are only done annually – and only then does a property get transferred to a land bank. Amending the statute to transfer unsold properties, after the first tax sale, to the land bank could potentially shave off two years that the property would otherwise remain unattended. Land banks have greater discretion and authority than municipalities to get vacant and abandoned properties sold and turned into productive use. So, ideally, the faster a property is transferred to a land bank, the quicker it will be turned around and sold instead of remaining unattended. In the end though, it is a delicate balance of protecting property owners' rights and efficiently flipping tax delinquent properties to private ownership.

#### 4. *Nuisance Statutes*

Another issue arises when properties are in the hands of private investors who may hold a property for passive investment or choose to wait and speculate on future payments of interest and penalties that may accrue. The property may have been purchased by a private investor either at a tax foreclosure sale or from a land bank. Here, nuisance abatement

legislation provides local governments an avenue to “encourage” property owners to remove nuisances. Kansas City has one such statute, codified in Section 67.398.1 of the Missouri Revised Statutes. Under this provision, a municipality may enact ordinances for the abatement of a condition of any property that any sort of nuisance present – including, but not limited to, debris, weeds, fallen trees, overgrown vegetation, broken furniture, or anything that is unhealthy or unsafe and declared to be a public nuisance.<sup>119</sup> This also applies to vacant or abandoned buildings.<sup>120</sup> At the presence of such nuisance, Kansas City may issue a notice to the property owner to remove the nuisance within seven days of receiving the notice.<sup>121</sup> If the property owner does not comply, the building commissioner or another designated officer may cause the nuisance to be removed or abated, and the cost of removing is recorded as an additional property tax on the property.<sup>122</sup> Like other property taxes, if the tax bill is unpaid, the property is put in tax-delinquent status, triggering the tax foreclosure process.

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<sup>119</sup> § 67.398.1.

<sup>120</sup> § 67.398.2.

<sup>121</sup> § 67.398.3.

<sup>122</sup> *Id.*

Incorporating a similar statute in St. Louis County may be just the motivator private investors, and property owners, need to do some much-needed maintenance and repairs on their properties. However, it is important to note that this statute is only as effective as the accompanying tax foreclosure process. For example, say an investor holding a vacant and blighted property, and upon receiving the nuisance notice, knows that under Missouri's tax foreclosure statute the property will not actually be sold at a tax auction until the third or fifth year of delinquency. Then, doing a simple cost and benefit analysis, the investor may find it more cost-effective to just wait it out three to five years to see if real estate prices go up in the area instead of complying with the nuisance notice. Thus, the property remains unattended for years regardless of the nuisance statute. Granted, if the nuisance statute requires the municipality to clear up the nuisance, some of the worst problems may be solved, but this would likely be a bare minimum effort as not to cause a public hazard, is done at the expense of taxpayers who have to front the costs, and, in the end, the property is still not used productively. All in all, the tax foreclosure process is intricately tied to the success of a land bank, or even a municipality, to turn blighted properties into productive use. As such,

any efforts made by St. Louis County to establish a land bank will need to take into consideration Missouri's tax foreclosure statutes.

## V. CONCLUSION

Although Missouri was one of the first states to establish a land bank, nearly 50 years later, the issue of blighted properties standing unattended for years is still a growing concern. St. Louis County is probably facing the biggest crisis in this area. A land bank may be just the solution, but the establishment of a land bank in the county comes with its own set of complications. Not only would this require legislative action, but the statute governing the creation and the operation of the land bank would need to be carefully crafted and incorporated into Missouri's current foreclosure process. This paper has made some recommendations on how to best achieve St. Louis County's goal to transform blighted areas into productive use, but this is only the beginning of what will likely prove to be a long and complex process.