

## The Detroit Land Bank Authority: A Modern Tool Perpetuating Racism & Classism in the City

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### ABSTRACT

*Detroit has a long history of pushing out local residents and limiting their land ownership; a history rooted in racism and classism. This has led to large amounts of land in the city not under the control of residents and long-time Detroiters, but under the control of the city itself. Cities with large amounts of vacant and foreclosed land across the country have turned to land banks as the managing tool for this land. The current land system in Detroit relies on the Detroit Land Bank Authority (DLBA) to manage the vacant and foreclosed properties in the city. While DLBA exerts significant power and control over the land in Detroit, it is a largely unregulated and unaccountable public institution. As DLBA continues to benefit from the large amounts of land in the city, to the detriment of long-term residents, it's crucial to understand how this public entity can continue to operate in a harmful way. This Note analyzes the DLBA and their operation within the city of Detroit, while offering a concrete path forward that begins to serve Detroiters.*

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#### I. INTRODUCTION: "WHERE ARE ALL THE PEOPLE IN DETROIT?"

There's a myth that Detroit is an abandoned city with massive amounts of vacant land just waiting to be developed.<sup>1</sup> This overly simplistic understanding of Detroit erases not just the people and communities that persist in the city, but the legal and structural land systems that created vast amounts of vacant land largely inaccessible to local residents. In 2015, Motorcity Mapping, Loveland Technologies, and Data Driven Detroit created maps of Detroit titled "Where Are All the People in Detroit?"<sup>2</sup> These maps were an effort to shed light and honor the 700,000 people that occupied the city at the time by mapping the "occupied, partially occupied, and possibly occupied" properties in

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1. See Alex B. Hill, *Map: Where Are All the People in Detroit – Occupancy and Foreclosure*, DETROITOGRAPHY (Jan. 16, 2015), <https://detroitography.com/2015/01/16/map-where-are-all-the-people-in-detroit-occupancy-and-foreclosure/>.

2. *Id.*

Detroit.<sup>3</sup> The maps dispel the myth that Detroit is an unoccupied blank canvas by showing that 81% of structures are occupied and 54% of properties contain occupied structures.<sup>4</sup> Historic and current land practices pushed out and dispossessed residents of land ownership despite vast availability of property.

Regardless of this overstated myth, the question remains: what happens with this seemingly-vacant and foreclosed land? To understand the evolution of the land system in Detroit and the city's approach to vacant and foreclosed land, analyzing one of the newer systemic barriers and legal systems that govern land in Detroit is crucial. The Detroit Land Bank Authority (DLBA) is a quasi-government organization created for the purpose of managing the city's vacant and abandoned properties.<sup>5</sup> DLBA and its practices have a profound impact on the city land system and residents' access to land. But the residents of the city are dissatisfied with DLBA failing to meet its purpose of developing the city with community and local residents centered in that work.<sup>6</sup> A critical look at the legal mechanisms that govern DLBA's work and its practical implications help explain how this entity continues to operate in ways that bar local residents from obtaining title to land and destroy existing communities.<sup>7</sup> There is an opportunity to leverage DLBA's power in the city in order to promote racial equity and local homeownership.<sup>8</sup>

This Note analyzes the current land system in Detroit and provides a path forward centered on the established, resilient Detroit community. Part II provides background on access to land in the city of Detroit and the ways the city has used land systems to deepen economic disparities between racial and social classes. Part III gives an overview of the rise of land banks as a tool for land management across the country. Part IV explains the legal framework and operations of the DLBA. It uses recent court cases to highlight the critiques and practical implications of DLBA's operations. Part V provides practical implications of barring land ownership to Detroit residents. It analyzes both the ways in which DLBA should shift its current practices to align better with centering local Detroiters in the work and how to change its legal mechanism to better meet community needs. It argues that DLBA needs to be held accountable directly to community stakeholders and reorganized to accommodate and uplift native Detroiters in pursuit of land ownership.

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3. *Id.*

4. *Id.*

5. Tom Perkins, *The Detroit Land Bank and its Many Controversies, Explained*, CURBED DETROIT (Apr. 30, 2020, 10:02 AM), <https://detroit.curbed.com/2020/4/30/21166791/detroit-land-bank-authority-vacant-house-for-sale>.

6. *See id.*; *Who We Are*, DETROIT LAND BANK AUTH., <https://buildingdetroit.org/overview> (last visited May 9, 2023).

7. *See infra* Part IV.

8. *See infra* Part V.

## II. DETROIT'S HISTORIC DISPLACEMENT OF RESIDENTS

Federal policies implemented in Detroit and similar cities across the country historically limited home ownership to white people and created deeply segregated communities. Beginning in the late 1800s, racial covenants restricted access as a homeowner or occupant based on the person's race.<sup>9</sup> Starting in the 1910s and continuing through the 1960s, the federal government invested in homeownership and suburbs in cities across the nation, but limited that investment by creating residential security maps that systemically labeled neighborhoods with Black and low-income people as high risk for home loans.<sup>10</sup> Starting in the 1930s, the Federal Housing Administration (FHA) required racial segregation for the federal mortgage insurance program and emphasized "compatibility among the neighborhood occupants."<sup>11</sup> This resulted in the systemic segregation of Black residents of Detroit to Paradise Valley and Black Bottom, the Black and immigrant neighborhoods in Detroit.<sup>12</sup> It also meant these Detroiters were pushed out of the homeownership market by the federal government.<sup>13</sup> Redlining segregated the city and created barriers to homeownership for Black people in Detroit and across the country.<sup>14</sup> The resulting white flight, because of both federal redlining policies and racist personal choices, segregated the metro area so effectively that it persists to this day.<sup>15</sup> During this time, the construction of federal highways for the sake of urban renewal was funded by the National Housing Act of 1949 and used to destroy the prosperous Black Bottom neighborhood and immigrant communities.<sup>16</sup>

Detroit's local government and the federal government have a history of repeatedly using legal systems to displace Black and immigrant populations within the city.<sup>17</sup> When Black people migrated from the South for manufacturing

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9. See generally Florence Wagman Roisman, *Stumbling Stones at Levittown: What to Do About Racial Covenants in the United States*, 30 J. AFFORDABLE HOUS. & CMTY. DEV. L. 461 (2022).

10. See RICHARD ROTHSTEIN, *THE COLOR OF LAW*, 48–50, 64–65 (2017) (describing the implementation of federal racial zoning).

11. See *id.*, at 64–66 (quoting the Underwriting Manual used by the FHA).

12. See Jeremy Peters, *Cultural and Social Mecca: Entrepreneurial Action and Venue Agglomeration in Detroit's Paradise Valley and Black Bottom Neighborhoods*, 9 ARTIVATE 20, 20, 22 (2020).

13. See ROTHSTEIN, *supra* note 10, at 64–65.

14. See *id.*, at 14, 58–60; Megan Kirk, *Painting the City Red: How Redlining Impacts Detroit*, MICHIGAN CHRON. (Sept. 22, 2021), <https://michiganchronicle.com/2021/09/22/painting-the-city-red-how-redlining-impacts-detroit/>. Cf. ROTHSTEIN, *supra* note 10, at 64 (describing a St. Louis white middle-class suburb colored green by an appraiser because "not a single foreigner or negro" lived there).

15. See ROTHSTEIN, *supra* note 10, at 95–96; Kirk, *supra* note 14 (discussing the 2019 USA Today report that the Detroit metro area ranks as the second most segregated city in the country).

16. See *How the Razing of Detroit's Black Bottom Neighborhood Shaped Michigan's History*, MICHIGAN RADIO (Feb. 11, 2019, 4:52 PM), <https://www.michiganradio.org/arts-culture/2019-02-11/how-the-razing-of-detroits-black-bottom-neighborhood-shaped-michigans-history> [hereinafter *Black Bottom*]; ROTHSTEIN, *supra* note 10, at 128–29 (discussing Detroit's destruction of Black neighborhoods for the Chrysler plant and building of I-75).

17. See ROTHSTEIN, *supra* note 10, at 128–29.

jobs during the Great Migration,<sup>18</sup> they were met with hostility, violent white neighbors, and restrictive racial covenants that segregated the city and confined Black homeownership to only certain neighborhoods, if at all.<sup>19</sup> Detroit's Eight Mile Wall, a now infamous structure symbolic of housing segregation, was constructed in reaction to these policies in order for a developer to secure federal funding to build a neighborhood and ensure that it would remain segregated.<sup>20</sup> The Black Bottom and Paradise Valley neighborhoods—corridors of Black people and immigrants living and sharing in the enjoyment of art, businesses, and nightlife—were destroyed to construct the I-375 highway and the Lafayette Park residential district.<sup>21</sup>

The history of systemic barriers to land and home ownership for Black Detroiters affects residents to this day.<sup>22</sup> As of 2022, the U.S. Census reports that 77.9% of Detroiters are Black people.<sup>23</sup> The average median household income from 2017-2021 was \$34,762, almost half of the average median household income in Michigan.<sup>24</sup> The Office of Management and Budget estimates that 31.8% of Detroiters live in poverty, almost three times the amount of Michiganders that are estimated to live in poverty.<sup>25</sup> These disparate economic conditions are experienced by a majority Black population in the city and can be directly traced back to systemic gatekeeping of property ownership and destruction of community wealth, which created generational wealth gaps because of lack of access to property.<sup>26</sup>

These policies and disparate outcomes are not unique to Detroit. A 2019 Pew Institute Study found that 75.1% of all homeowners were white and Black people

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18. See generally William J. Collins, *The Great Migration of Black Americans from the US South: A Guide and Interpretation*, 80 EXPLORATIONS IN ECONOMIC HISTORY 101382 (2021).

19. See ROTHSTEIN, *supra* note 10, at 79–80 (describing the historic use of racial covenants reinforced and upheld by the federal government). In 1925, Ossian Sweet was a Black doctor that bought a house on Garland Street in Detroit, an all-white neighborhood. A white mob formed outside of his family's home when he moved in. Ossian, his wife Gladys, and his friends kept watch overnight while the mob threw stones and broke a window. Ossian and his friends were put on trial for murder when a shot from the house hit two white men, wounding one in the leg and killing the other. See KEVIN BOYLE, ARC OF JUSTICE 17–19, 37–39 (2004).

20. See ROTHSTEIN, *supra* note 10, at 74–75.

21. *Black Bottom*, *supra* note 16; Sara Powers, *I-375 Project: Removing the Highway That Replaced Detroit's Black Bottom Neighborhood*, CBS DETROIT (Aug. 10, 2021, 9:24 AM), <https://detroit.cbslocal.com/2021/08/10/i-375-project-removing-the-highway-that-replaced-detroit-black-bottom-neighborhood/>; Peters, *supra* note 12, at 21.

22. See Hayley Harding & Sarah Rahal, *Most Segregated City in America is Detroit. How That Impacts Detroiters*, DETROIT NEWS (June 21, 2021, 9:45 AM), <https://www.detroitnews.com/story/news/local/detroit-city/2021/06/21/detroit-most-segregated-city-country-berkeley-study-finds/7718514002/>.

23. *QuickFacts Detroit City, Michigan, Michigan*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/detroitcitymichigan,MI/PST045219> (last visited May 9, 2023).

24. *Id.* (stating the average median household income for Michigan is \$63,202).

25. *Id.* (stating the 13.1% of Michigan residents live in poverty).

26. See ROTHSTEIN, *supra* note 10, at 186–88.

were more likely to rent than own property.<sup>27</sup> While the explicit race-based systemic policies have been struck down, their legacy continues to this day. For example, racial covenants have been illegal since the Supreme Court struck them down in 1948 in *Shelley v. Kraemer*, but experts estimate that millions of these racial covenants remain on the books.<sup>28</sup> Not only do these systems continue to create income and health disparities, but the systemic displacement of Detroiters continues in the modern context with race-neutral legal systems that increase these disparities.<sup>29</sup> Access to safe housing through access to land ownership has been linked to better health and community outcomes.<sup>30</sup> When looking forward to development of land and property, it is vital to understand the historic ways that entire communities have been destroyed to create policies and practices that adequately address this history.<sup>31</sup>

### III. LAND BANKS AS A MODERN TOOL FOR URBAN DEVELOPMENT

Cities are increasingly turning to land banks as a tool to drive positive economic outcomes, including fighting “blight” and increasing home ownership through the development of land. Land banks are public entities used to consolidate control of tax-foreclosed and vacant property.<sup>32</sup> This practice first started in St. Louis, Missouri in 1971, but the number of land banks increased significantly after the 2008 foreclosure crisis.<sup>33</sup> Cities suddenly had massive amounts of vacant property and turned to land banks as a solution.<sup>34</sup>

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27. Drew DeSilver, *As National Eviction Ban Expires, a Look at Who Rents and Who Owns in the U.S.*, PEW RSCH. CNTR. (Aug. 2, 2021), <https://www.pewresearch.org/fact-tank/2021/08/02/as-national-eviction-ban-expires-a-look-at-who-rents-and-who-owns-in-the-u-s/>.

28. Cheryl W. Thompson, Cristina Kim, & Natalie Moore, *Racial Covenants, a Relic of the Past, are Still on the Books Across the Country*, NPR (Nov. 17, 2021, 5:06 AM), <https://www.npr.org/2021/11/17/1049052531/racial-covenants-housing-discrimination>.

29. Katie Moran-McCabe & Scott Burris, *Eviction and the Necessary Conditions for Health*, 385 NEW ENG. J. MED. 1143, 1143 (2021) (citing intersecting systemic issues of structural racism, economic inequality, and commodification of housing as the cause of a “broken system of laws, policies, and practices” that adversely affect access to housing).

30. See *Social Determinants of Health*, HEALTHY PEOPLE 2030, <https://health.gov/healthypeople/objectives-and-data/social-determinants-health> (last visited May 9, 2023); Moran-McCabe & Burris, *supra* note 29; ROTHSTEIN, *supra* note 10, at 128–29.

31. See ROTHSTEIN, *supra* note 10, at 190–193 (discussing the government’s role in either exacerbating or reverse housing segregation).

32. U.S. DEP’T OF HOUS. & URB. DEV., OFF. OF POL’Y DEV. & RSCH., REVITALIZING FORECLOSED PROPERTIES WITH LAND BANKS 2 (2009), <https://www.huduser.gov/portal/publications/landbanks.pdf> [hereinafter REVITALIZING WITH LAND BANKS].

33. See *id.* See Kriston Capps, *Can Land Banks Get Us Out of This Mess?*, BLOOMBERG CITYLAB (June 15, 2020, 2:41 PM), <https://www.bloomberg.com/news/articles/2020-06-15/how-coronavirus-makes-the-case-for-land-banks>; Tarik Abdelazim, *How to Fund Land Banks*, SHELTERFORCE (Nov. 13, 2018), <https://shelterforce.org/2018/11/13/how-to-fund-land-banks/> (describing the rise in land banks since 2008 housing crisis).

34. Liz Brumer, *What Is a Land Bank?*, MILLIONACRES (May 15, 2020), [<https://web.archive.org/web/20210612121405/https://www.millionacres.com/real-estate-basics/real-estate-terms/what-land-bank/>] (archived).

Land Banks are created by state and local governments and often employed to develop and repurpose that land.<sup>35</sup> The locality creates the vision for the land bank, including how it operates and the various accountability measures it needs in place.<sup>36</sup> Some land banks are directly under a government body, while others are public entities not directly housed in the local government.<sup>37</sup> Land banks develop property by demolishing the dilapidated property on the land or renovating the property so that it is habitable for a new owner.<sup>38</sup> Land banks may sell land to local residents and developers with conditions for the land to be developed to create habitable land.<sup>39</sup> Land banks can achieve a number of goals, including clearing vacant properties, selling property to be redeveloped, maintaining or developing land to sell it, and abating delinquent taxes on properties.<sup>40</sup>

There has been a recent push to grow and encourage the use of land banks in areas with large amounts of foreclosed land, including a recent congressional act that created a network of land banks to help support, train, and fund grants for land banks across the country.<sup>41</sup> Though the act explicitly pushes for land banks to deal with vacant property that disproportionately affects “low-income neighborhoods and communities of color,” there have been historical pitfalls to federal and state housing policies.<sup>42</sup> Without ensuring proper accountability measures and centering those communities in the solution, these land banks fail to protect the interests of low-income and communities of color.<sup>43</sup> Land banks have been criticized for only serving developers and not meeting the needs of the community.<sup>44</sup> However, politicians continue to prop up land banks as the answer to “blight” and how to redevelop abandoned land.<sup>45</sup>

An example of a land bank built up by a local community is the Philadelphia Land Bank.<sup>46</sup> Faith, labor, and community organizers pushed to reclaim vacant land by creating a land bank that prioritizes community input and goals,

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35. *Id.*; REVITALIZING WITH LAND BANKS, *supra* note 32.

36. *Land Banks*, LOCAL HOUSING SOLUTIONS, <https://localhousingsolutions.org/housing-policy-library/land-banks/> (last visited May 9, 2023); REVITALIZING WITH LAND BANKS, *supra* note 32, at 1–2.

37. *Id.*; Brumer, *supra* note 34.

38. *Land Banks*, *supra* note 36.

39. *Id.*; Brumer, *supra* note 34.

40. Brumer, *supra* note 34; *Land Banks*, *supra* note 36; REVITALIZING WITH LAND BANKS, *supra* note 32, at 2–3.

41. National Land Bank Network Act, H.R. 7103, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-bill/7103/text?r=6&s=1>.

42. *Id.* See James J. Kelly, Jr., *Affirmatively Furthering Neighborhood Choice: Vacant Property Strategies and Fair Housing*, 49 U. MEM. L. REV. 1009, 1009–10 (2016). See generally ROTHSTEIN, *supra* note 10.

43. See Jill Feldstein, *Winning a Land Bank We Can Trust*, SHELTERFORCE (Oct. 2, 2014), [https://shelterforce.org/2014/10/02/winning\\_a\\_land\\_bank\\_we\\_can\\_trust2/](https://shelterforce.org/2014/10/02/winning_a_land_bank_we_can_trust2/); Capps, *supra* note 33.

44. *Land Banks*, *supra* note 36.

45. REPS. KILDEE, FERGUSON INTRODUCE BIPARTISAN BILL TO EXPAND LAND BANKS ACROSS AMERICA, CONGRESSMAN DAN KILDEE (June 16, 2020), <https://dankildee.house.gov/media/press-releases/reps-kildee-ferguson-introduce-bipartisan-bill-expand-land-banks-across-america>. See also Capps, *supra* note 33.

46. See Feldstein, *supra* note 43.

especially affordable housing, through their “Campaign to Take Back Vacant Land.”<sup>47</sup> Affordable housing advocates, including Jill Feldstein with the Women’s Community Revitalization Project, pushed for what they described as the “most progressive land banking legislation in the country.”<sup>48</sup> The campaign points to their five key principles as guiding their vision in the process: (1) public land should create equitable development, (2) community members need to be included in decision-making, (3) the land bank needs to be accountable to communities, (4) decision-making should be transparent, and (5) access to land should be a simple process.<sup>49</sup> The land bank bill included prescriptive measures that set out both a vision and requirements to “promote development without displacement.”<sup>50</sup> The Philadelphia Land Bank works with the Philadelphia Redevelopment Authority and the Philadelphia Housing Development Corp.<sup>51</sup> Proponents of this style of land bank suggested Detroit take note of how this land bank operates.<sup>52</sup> They criticized land banks that are too bogged down with bureaucracy to make decisions quickly, unable to create alternative ways for accountability that still prioritizes efficiency.<sup>53</sup> However, there is a recognition that the purpose is to attract developers, which requires taking time to update buildings and land.<sup>54</sup> While there are benefits to one entity overseeing all the vacant land, there’s concern to what happens with operations are streamlined solely for the purpose of selling land for developers and the effect on local communities. DLBA swiftly selling off property and prioritizing updating land only for developers leaves out entire communities that existed on the land before developers come in.<sup>55</sup>

#### IV. CURRENT DISPOSSESSION & DISPLACEMENT OF RESIDENTS THROUGH THE LAND BANK’S LEGAL FRAMEWORK

These critiques and concerns of land banks are apparent in DLBA operations in Detroit. DLBA not only works within the confines of the legal framework in ways that create disparate impacts for residents seeking to buy or retain their homes, but also fails to use the legal framework and tools that do exist to meet its purported goals, namely by making homes available for purchase for Detroit residents. DLBA’s inequitable and illegal practices include benefiting directly from the tax delinquent properties, failing to meet contractual obligations, and abusing the federal funds from its demolition program. This legal framework creates

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47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. PHDC, <https://phdcphila.org/> (last visited May 9, 2023).

52. Jon Hurdle, *Philadelphia Forges Plan to Rebuild From Decay*, N.Y. TIMES (Dec. 31, 2013), [https://www.nytimes.com/2014/01/01/realestate/commercial/a-land-bank-is-forged-for-decaying-blocks-in-philadelphia.html?\\_r=0](https://www.nytimes.com/2014/01/01/realestate/commercial/a-land-bank-is-forged-for-decaying-blocks-in-philadelphia.html?_r=0).

53. *Id.*

54. *Id.*

55. *See id.*

systems for the DLBA to legally and permissively utilize claims to property that further drives disparate economic impacts for local residents and fails to center the community in the develop of the city.

*A. How the Land Bank Operates Within the City: The Legal Framework*

In 2010 Detroit created DLBA as a public body corporate under the authority of state legislation and through an intergovernmental agreement.<sup>56</sup> Though established by the city and provided public funding, the DLBA is a separate legal entity from the city of Detroit and governed by a Board of Directors.<sup>57</sup> The Board of Directors are five members: four appointed by the Mayor and approved by city council and one appointed by the Executive Director of the Michigan State Housing Development Authority.<sup>58</sup> The Mayor is not eligible to serve on the DLBA Board of Directors.<sup>59</sup> The Board of Directors are responsible for the broader policy implementation and oversight, while the Executive Director oversees the daily operations of DLBA.<sup>60</sup> As a public corporate entity, DLBA can be sued in civil court, though it enjoys the benefits of government immunity.<sup>61</sup> The Michigan legislature enacted The Land Bank Fast Track Act, the authorizing legislation for the DLBA, in 2003 to encourage the creation of land banks in the state to “strengthen and revitalize the economy” in the state.<sup>62</sup> This act grants permission to localities to create land banks with the power to acquire, hold, and manage property.<sup>63</sup>

In Detroit, DLBA primarily acquires property through the Wayne County tax foreclosure system.<sup>64</sup> When tax-foreclosed properties are not sold at auction, they are transferred to the control of DLBA.<sup>65</sup> DLBA has the power to file for quiet title to land in the city, which allows them to file a claim asserting their ownership interest in the land and preventing anyone who might have a competing interest in

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56. See SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION OF DETROIT LAND BANK AUTHORITY (2013), <https://s3.us-east-2.amazonaws.com/dlba-production-bucket/cms/Articles+-+2nd+Amended.pdf> [hereinafter ARTICLES OF INCORPORATION]; SECOND AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT BETWEEN THE MICHIGAN LAND BANK FAST TRACK AUTHORITY AND THE CITY OF DETROIT CREATING THE DETROIT LAND BANK AUTHORITY (2013), <https://s3.us-east-2.amazonaws.com/dlba-production-bucket/cms/IGA+-+2nd+Amended+EXECUTED+121913.pdf> [hereinafter INTERGOVERNMENTAL AGREEMENT].

57. See INTERGOVERNMENTAL AGREEMENT, *supra* note 56.

58. *Id.* at 5.

59. *Id.*

60. See *id.* at 6–7.

61. *Id.* at 1, 8, 10.

62. See ARTICLES OF INCORPORATION, *supra* note 56; INTERGOVERNMENTAL AGREEMENT, *supra* note 56, at 1; Land Bank Fast Track Act, Act 258 § 124.752(2) (Mich. 2003), [http://www.legislature.mi.gov/\(S\(h3xsjpyvapwsibpikanbijv3\)\)/documents/mcl/pdf/mcl-258-2003-1.pdf](http://www.legislature.mi.gov/(S(h3xsjpyvapwsibpikanbijv3))/documents/mcl/pdf/mcl-258-2003-1.pdf).

63. Land Bank Fast Track Act, Act 258 §§ 124.754–59 (Mich. 2003), [http://www.legislature.mi.gov/\(S\(h3xsjpyvapwsibpikanbijv3\)\)/documents/mcl/pdf/mcl-258-2003-1.pdf](http://www.legislature.mi.gov/(S(h3xsjpyvapwsibpikanbijv3))/documents/mcl/pdf/mcl-258-2003-1.pdf).

64. Perkins, *supra* note 5.

65. *Id.*

the land from asserting that claim in the future.<sup>66</sup> Part of managing these properties includes demolishing structures on acquired land through its demolition program.<sup>67</sup> As of 2020, DLBA owned 25% of Detroit properties and 22,000 homes in the city.<sup>68</sup>

The city created DLBA to consolidate all city-owned properties owned under one entity to streamline the ability to address vacant land.<sup>69</sup> Before DLBA, property in the city was owned and managed by different government departments, which caused bureaucratic issues that prevented land from being resold or maintained.<sup>70</sup>

The stated mission of the Land Bank is:

The Detroit Land Bank Authority's mission is to return the city's blighted and vacant properties to productive use. We utilize a variety of sales programs to make homeownership and land purchases accessible to Detroiters. Plus, we take our commitment to revitalization one step further with our Compliance program, requiring renovation and occupancy to improve neighborhoods and combat real estate speculation. The Detroit Land Bank Authority works directly with individual buyers, as well as Community Partner organizations and developers for projects big and small.<sup>71</sup>

While some describe the Fast Track Act as one of the most progressive land bank legislations in the country,<sup>72</sup> DLBA still fails to meet its potential. Though DLBA purports to center local Detroiters and communities in their work, there are numerous accusations that DLBA both speculates property values to sell for a higher profit to developers and purposefully refuses to sell to Detroiters.<sup>73</sup> Further, DLBA directly benefits from local dispossession of land by obtaining title to all the foreclosed land not sold at auction.<sup>74</sup> This seemingly-neutral practice connects DLBA to the systemic dispossession of land by the city, even in cases where long-term residents believed they had paid off delinquent taxes.<sup>75</sup> This federally-funded entity uses taxpayer dollars to fund projects, including their

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66. Land Bank Fast Track Act, at § 124.759; *Quiet Title Action*, WEX, LEGAL INFORMATION INSTITUTE, [https://www.law.cornell.edu/wex/quiet\\_title\\_action](https://www.law.cornell.edu/wex/quiet_title_action) (last visited May 9, 2023).

67. REVITALIZING WITH LAND BANKS, *supra* note 32, at 2–3. See Katlyn Alo, *Detroit Land Bank Oversight at Issue as Neighbors Complain of Poor Upkeep*, DETROIT NEWS (Feb. 13, 2020, 10:04 PM), <https://www.detroitnews.com/story/news/local/detroit-city/2020/02/13/detroit-land-bank-oversight-issue-amid-complaints-poor-upkeep/4592183002/>.

68. Alo, *supra* note 67.

69. Perkins, *supra* note 5.

70. Perkins, *supra* note 5. See ARTICLES OF INCORPORATION, *supra* note 56.

71. *Who We Are*, *supra* note 6.

72. REVITALIZING WITH LAND BANKS, *supra* note 32, at 2.

73. Perkins, *supra* note 5.

74. *Id.*

75. See, e.g., *Murray v. Detroit Land Bank Auth.*, No. 341967, 2019 WL 1780651 (Mich. Ct. App. Apr. 23, 2019).

large demolition program that cannot account for \$13 million in costs.<sup>76</sup> The same DLBA demolition program has been accused of misusing public funds to defend the misuse of demolition funds.<sup>77</sup> Despite these issues with DLBA's programs, it continues to acquire title to property in the city and operate in an official capacity. The unchecked power of the DLBA gatekeeps land from Detroiters and only serves to push Detroit into the control of gentrifiers and developers who lack connection to the community.

*B. DLBA Uses its Legal Structure to Gatekeep Land and Abuse Power Within the City*

Detroiters are critical of DLBA abuse and misuse of power within the city.<sup>78</sup> Its estimated that every block in the city has at least one DLBA property.<sup>79</sup> The vast amount of land DLBA owns within the city means that residents of Detroit regularly have almost unavoidable contact with DLBA land.<sup>80</sup> Even though the land it controls is not evenly distributed through the city, it is estimated that 75% of all residential property shares a block with at least one DLBA property.<sup>81</sup> City officials often spend time fielding complaints from residents about vacant properties, with 25% of those complaints about land under the DLBA's control.<sup>82</sup> Community members have accused DLBA of dishonest practices including side-stepping contractual obligations when they change their own procedures and requirements and failing to fulfill promises to preserve structures on alleged tax-delinquent property.<sup>83</sup> Not all residents make a conscious decision to engage in business with the Land Bank, but when they do, the Land Bank's practices lack transparency and result in the dispossession of their title to the land.<sup>84</sup> Their practices have caught federal attention as well, with multiple probes into misuse of

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76. Steve Neavling, *Detroit's Demolition Program Under Fire for Failing to Substantiate \$13M in Costs*, DETROIT METRO TIMES (Jun. 28, 2021), <https://www.metrotimes.com/news-hits/archives/2021/06/28/detroits-demolition-program-under-fire-for-failing-to-substantiate-13m-in-costs>.

77. Kat Stafford, *Federal Investigation of Detroit Housing Demolitions Cost More Than \$500k in Legal Fees*, DETROIT FREE PRESS (May 31, 2019), <https://www.freep.com/story/news/investigations/2019/05/31/duggan-detroit-land-bank-legal-fees/1220094001/>.

78. See, e.g., Perkins, *supra* note 5 (describing the different accusations against the Land Bank including unfair treatment of different landowners, speculating, bid-rigging, trying to seize homes it doesn't own, favoring selling to city officials, and refusing to sell Detroiters property); Alo, *supra* note 67; John Gallagher, *Detroit Land Bank Admits Faults, Carries on Amid Complaints It Moves Too Slowly*, DETROIT FREE PRESS (Dec. 3, 2019, 6:24 AM), <https://www.freep.com/story/money/business/john-gallagher/2019/12/03/detroit-land-bank-criticism-weve-accomplished-tremendous-amount/2586225001/>; Attorney Patterson Secures Second Appellate Court Victory Against Detroit Land Bank Authority, PATTERSON JUST. COUNSEL, PLLC (June 22, 2021), <https://www.pattersonjustice.com/attorney-patterson-secures-second-appellate-court-victory-against-detroit-land-bank-authority/> [hereinafter PATTERSON JUSTICE COUNSEL]; Stafford, *supra* note 77.

79. Alo, *supra* note 67.

80. *Id.*

81. *Id.*

82. *Id.*

83. See Murray v. Detroit Land Bank Authority, 2019 WL 1780651 (Ct. of Appeals of MI 2019); Sharp v. Hillery, et. al., 2021 WL 158835 (Ct. of Appeals of MI Apr. 22, 2021).

84. See Murray, 2019 WL 1780651; Sharp, 2021 WL 158835.

public funds for its demolition program and failing to notify impacted residents about the possible contaminated topsoil used on numerous demolition sites in the city.<sup>85</sup> These probes have caused the Land Bank to use more public funds to combat and comply with the federal investigation.<sup>86</sup> These controversies affect the daily lives of residents through the propping up of harmful practices that only serve the Land Bank in its assertion of power over the property in Detroit.

### 1. The Land Bank and Tax-delinquent Properties

A crucial part of the legal framework of the Land Bank is the ability to claim title to tax-foreclosed property. The tax foreclosure program in Detroit has been scrutinized for harmful illegal practices: Bernadette Atuahene and Christopher Berry found that, from 2011–2015, the city was systemically over-assessing property beyond the constitutional limit of 50%, leading to increased rates of property tax foreclosure.<sup>87</sup> In 2020, a Detroit News investigation uncovered that Detroit homeowners were overtaxed by an estimate of \$600 million between 2010–2016.<sup>88</sup> During that same time, between 2011–2015, Wayne County treasurer's office foreclosed on an estimated 100,000 properties—1 out of every 4 properties in the city.<sup>89</sup> Of those foreclosures, about 30% resulted in residents losing their homes.<sup>90</sup> This research uncovers the city's greatest tool to push people out of their homes and dispossess them of their land.

DLBA directly benefits from these practices because land not sold at auction comes under their control.<sup>91</sup> Currently, there is no plan from the mayor that would provide automatic reparations for the money stolen by the city from illegally tax-foreclosed residents and submitting a claim for this money is both time consuming and cost prohibitive.<sup>92</sup> This system leaves residents without any realistic recourse in the event that their homes are illegally foreclosed and subsequently under the control of DLBA. Given the low median income levels in Detroit, residents are often unable to access counsel for civil matters, leading to the loss of

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85. Joe Guillen & Tresa Baldas, *Detroit Land Bank Turns over Records to Feds Amid Widening Probe*, DETROIT FREE PRESS (Nov. 16, 2016), <https://www.freep.com/story/news/local/michigan/detroit/2016/11/16/feds-raid-detroit-land-bank-take-computers-records/93977426/>; Neavling, *supra* note 76; *Detroit Land Bank Subpoenaed by Department of Treasury*, FOX 2 DETROIT (July 7, 2016), <https://www.fox2detroit.com/news/detroit-land-bank-subpoenaed-by-department-of-treasury>; Christine Ferretti, *Investigation of Detroit Land Bank Raises Concern over Excess Spending, Contamination*, DETROIT NEWS (Mar. 30, 2021), <https://www.detroitnews.com/story/news/local/detroit-city/2021/03/30/detroit-blight-contamination-soil-demolition-land-bank-duggan/7055832002/>.

86. Stafford, *supra* note 77.

87. Bernadette Atuahene & Christopher Berry, *Taxed Out: Illegal Property Tax Assessments and the Epidemic of Tax Foreclosures in Detroit*, 9 UC IRVINE L. REV. 847, 848–49, 886 (2019).

88. Christine MacDonald, *Detroit Homeowners Overtaxed \$600 Million*, DETROIT NEWS (Jan. 9, 2020, 8:42 PM), <https://www.detroitnews.com/story/news/local/detroit-city/housing/2020/01/09/detroit-homeowners-overtaxed-600-million/2698518001/>.

89. Atuahene & Berry, *supra* note 87, at 848 (citing authors' calculations).

90. *Id.*

91. *Id.* at 848; Perkins, *supra* note 5.

92. MacDonald, *supra* note 88; Atuahene & Berry, *supra* note 87, at 886.

their land and no means for civil recourse.<sup>93</sup> Though the DLBA is not over-taxing residents directly, it does benefit directly from foreclosure and these illegal practices by taking control of this land. The more land under foreclosure, the broader the power and reach of DLBA throughout the city. The use of tax foreclosure as a justification to take the land of low-income, Black community members further creates inequities and seems deeply unfair when based on improper tax assessments.

## 2. *Sharp v. Hillery* and the Failure to Fulfill Contractual Obligations

Though few residents have successfully brought actions against DLBA for its unfair and harmful practices, *Sharp v. Hillery* is an example of litigation resulting from the DLBA's operations. In *Sharp v. Hillery*, the dispute arose out of the side lot program DLBA uses to sell neighborhood owners lots adjacent to their property.<sup>94</sup> In January 2015, the Hillerys applied, purchased, and paid immediately for a side lot at a public side lot fair held by DLBA.<sup>95</sup> DLBA did not deliver the deed to the property until June 2017.<sup>96</sup> Between the time the land was purchased and the deed was delivered, the requirements for the program had changed which made the Hillerys ineligible to purchase the lot.<sup>97</sup> A neighbor, Sharp, capitalized on the rule change and sued both the Hillerys and DLBA, alleging that the neighbor was the only one eligible to purchase the lot as the only adjacent owner.<sup>98</sup> DLBA sided with the neighbor and sued the Hillerys, alleging they misrepresented themselves in the sale.<sup>99</sup> Counsel for the Hillerys describe the DLBA as one of the most consistently complained-about entities in the city.<sup>100</sup> Their legal representation in the case has put out the call for other residents experiencing the same harmful practices.<sup>101</sup> This case is an example of DLBA's failure to fulfill its contractual obligations to residents and shows how the enforcement of its policies leads to land disputes between neighbors. This power and control over land creates issues when DLBA fails to honor its contracts and recalibrates the rules to create conflict between neighbors.

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93. See *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans*, LEGAL SERVICES CORP. 1, 6 (2017), <https://www.lsc.gov/our-impact/publications/other-publications-and-reports/justice-gap-report> (discussing the gap in access to civil legal needs and low-income Americans reporting that 86% of their civil legal problems went with inadequate or any legal help).

94. *Sharp v. Hillery*, et. al., 2021 WL 158835, 1–2 (Ct. of Appeals Mich. Apr. 22, 2021).

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. PATTERSON JUSTICE COUNSEL, *supra* note 78.

101. *Id.*

### 3. The Federal Investigation of the Demolition Program and the Misuse of Public Funds

DLBA, as a public entity, is funded by taxpayers and, thus, tenuously accountable to them, though it is not directly under the city government's control.<sup>102</sup> As a publicly-funded entity, the DLBA has come under investigation by the Federal Bureau of Investigations (FBI)<sup>103</sup> and the Office of Inspector General (OIG).<sup>104</sup> The FBI seized computers and documents for their probes into the practices of the home auction program and the use of federal funds for its demolition program.<sup>105</sup> The probe into the home auction program accuses city employees of rigging the property auctions.<sup>106</sup> After Mayor Duggan implemented a program giving 50% discounts at auction for city employees, it was discovered that city employees were flipping properties instead of moving into the home as required by the discount.<sup>107</sup> The probe into the demolition program is under investigation for a 60% increase in demolition costs after Mayor Duggan implemented a new management structure.<sup>108</sup>

OIG's investigation uncovered that DLBA wasted resources and failed to notify impacted residents about the possible contaminated topsoil used on numerous demolition sites in the city.<sup>109</sup> OIG found that 81 of 89 sites where McDonagh, a Chicago-based demolition company, filled in holes "contained unacceptable levels of mercury, arsenic, chromium, or lead."<sup>110</sup> In response, DLBA spent an additional \$100,000 refuting OIG's report with a new report that concluded that only 23 of the 89 sites were contaminated.<sup>111</sup> OIG is also investigating the city's decision not to notify residents of the contamination.<sup>112</sup>

Further, OIG investigated the demolition program's failure to substantiate thirteen million dollars in payments to contractors between 2017–2019.<sup>113</sup> OIG was unable to determine the amount DLBA paid to local contractors for dirt because none of the 100 invoices examined included the actual amount paid.<sup>114</sup> These investigations reveal not just issues with financial practices, but also how DLBA's decisions impact the city environmentally and economically by using out-of-state companies to do what could potentially be done locally.<sup>115</sup> In 2023,

102. Ferretti, *supra* note 85.

103. Guillen & Baldas, *supra* note 85.

104. Ferretti, *supra* note 85.

105. Guillen & Baldas, *supra* note 85.

106. *Id.*

107. *Id.*

108. *Id.*

109. Ferretti, *supra* note 85.

110. *Id.*

111. *Id.*

112. *Id.*

113. Dana Afana, *Detroit Land Bank Agrees to Pay \$1.5M to Settle Federal Investigation*, DETROIT FREE PRESS (Feb. 10, 2023, 3:57 PM), <https://www.freep.com/story/news/local/michigan/detroit/2023/02/10/detroit-land-bank-settles-federal-investigation/69893493007/>.

114. *Id.*

115. *See* Ferretti, *supra* note 85.

DLBA's board of directors settled OIG's claims for \$1.5 million dollars.<sup>116</sup> While DLBA asserted the funds were not from the public, they have refused to directly answer the question of where these funds came from.<sup>117</sup> These investigations call into question the public investment in an entity that is misusing public funds without accountability to the public.

Two companies have brought actions against the Land Bank for abuses and misconduct in the demolition program. The first case, *Direct Construction Services v. City of Detroit*, was brought by a construction company and its owner against the city of Detroit and the Land Bank claiming that they discriminated against the plaintiffs based on the owner's race and the company's refusal to fix prices to account for discrepancies in the demolition program's stated prices.<sup>118</sup> The plaintiffs claimed that the Land Bank retaliated against them for failing to adjust the stated prices for the sake of the federal investigation into the demolition program.<sup>119</sup> The district court affirmed the motion to dismiss the plaintiffs' claims, stating they lacked enough information in the complaint to establish municipal liability.<sup>120</sup> Municipal liability is a higher standard for plaintiffs to overcome in civil court, barring a mechanism for oversight to a government entity.

The second case, *Ellentuck v. Huntington*, arose after the government brought felony criminal charges for false pretenses against Ellentuck for his company, ADR Consultants, supplying "technical assistance and project management services" to Michigan Land Bank Authority (MLBA) for work mostly performed in Detroit.<sup>121</sup> MLBA and DLBA entered into an intergovernmental agreement that included assisting DLBA with project management services.<sup>122</sup> Ellentuck was acquitted of the charges by a jury in the Oakland Circuit Court.<sup>123</sup> He then brought this action against a number of defendants that were current or former employees of organizations including the MLBA, DLBA, Detroit Office of the Mayor, Detroit Building Authority, and the State of Michigan Office of the Attorney General.<sup>124</sup> Ellentuck alleged that he had raised objections to some of the institutional practices in the blight program, including that they were awarding no-bid contracts to subcontractors that bypassed the traditional process for contracting for work.<sup>125</sup> As a result of the plaintiff raising these concerns, he claimed that these entities retaliated against him by alleging his company was purposefully overbilling DLBA for work not done through the blight program.<sup>126</sup> The

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116. Afana, *supra* note 113.

117. See Afana, *supra* note 113; Stafford, *supra* note 77.

118. *Direct Constr. Servs., LLC, et al. v. City of Detroit, et al.*, 820 F. App'x. 417, 420–21 (6th Cir. 2020).

119. *Id.*

120. *Id.* at 428–29.

121. *Ellentuck v. Huntington*, 2018 WL 4339560, at \*1–2 (Mich. Ct. App. 2018).

122. *Id.*

123. *Id.* at 1.

124. *Id.* at 1–2.

125. *Id.*

126. *Id.*

action ultimately failed in the Michigan Court of Appeals because the court ruled that this civil issue had already been litigated in the plaintiff's criminal trial, and the plaintiff was barred from bringing the claim against defendants based on collateral estoppel, witness immunity, and governmental immunity.<sup>127</sup>

The federal investigation and these court cases bring forward the questionable and corrupt practices of DLBA's demolition program. Often, when development is coming to cities, developers tout how many jobs it will bring. Instead of providing jobs, DLBA has allegedly misused public funds, discriminated against contractors, and retaliated against them for objecting to DLBA's unfair bidding practices.<sup>128</sup> The outcomes of these cases also show us that plaintiffs face considerable systemic barriers when seeking to assert claims against DLBA, given DLBA's governmental immunity. This public entity is too far removed from public accountability through the legal system or any substantive alternatives and yet continues to misuse public funds.

### C. *Murray v. Detroit Land Bank Authority and the Displacement of Detroiters*

These repetitive failures to abide by obligations that prioritize Detroit residents obtaining land ownership and abuses of the demolition program came to a head in *Murray v. Detroit Land Bank Authority*. This system of claiming land and then destroying it does not occur in a vacuum; real Detroiters feel the consequences when the title to their land transfers without their knowledge. Mr. Murray brought this action against DLBA after they removed his belongings from his home, in which he had resided since the early 1960s, and demolished his property in July 2016.<sup>129</sup> In 2014, Mr. Murray's home was tax foreclosed.<sup>130</sup> Mr. Murray paid the delinquent taxes in an effort to retain his home.<sup>131</sup> Unbeknownst to Mr. Murray and despite his belief that the delinquent taxes were paid, the property transferred to DLBA.<sup>132</sup> He learned about DLBA's interest in his home when neighbors told him two men had pried into his house with a crowbar.<sup>133</sup> Mr. Murray then sought out and received confirmation from DLBA's Director of Public Affairs that the house would not be demolished.<sup>134</sup> Despite his complaint, DLBA retained title to the land and demolished his home of over 50 years because of their claim to the land through the tax foreclosure system.<sup>135</sup> Though DLBA claimed that they thought the home was unoccupied, Mr. Murray

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127. *Id.* at 2–3.

128. *See id.* at 1–2. *See also* Stafford, *supra* note 77.

129. *Murray v. Detroit Land Bank Auth.*, No. 341967, 2019 WL 1780651, at \*1 (Mich. Ct. App. Apr. 23, 2019).

130. *Id.*

131. *See id.*

132. *Id.*

133. Jennifer Dixon, *Detroiters Sue, Says His Lifelong Home Demolished in Ambush-Style Eviction*, DETROIT FREE PRESS (June 18, 2017), <https://www.freep.com/story/news/local/2017/06/19/ambush-eviction-demolition/378899001/>.

134. *See Murray*, 2019 WL 1780651, at \*1.

135. *Id.*; Dixon, *supra* note 133.

maintains that he still occupied the home.<sup>136</sup> In the process of demolishing his home, DLBA seized and destroyed his photos, mother's antiques, and family china cabinet along with his other belongings.<sup>137</sup>

This case is a stark example of DLBA's power in the city and how it benefits from the tax foreclosure system to the detriment of long-time residents and community members. It shows the real consequences of an irresponsibly-run demolition program, whose focus is speed and not keeping people housed.<sup>138</sup> DLBA used its federally-funded demolition program to destroy someone's home.<sup>139</sup> This case calls into question DLBA's operations and the wisdom in spending \$22,030 of public funds for the purpose of destroying a long-time resident's childhood home and possessions.<sup>140</sup> Removing someone's belongings and demolishing their home because it appeared that no one occupied the house should be outside of the scope of DLBA's power. The justification of these actions by DLBA shows a clear lack of accountability and alignment with valuing and prioritizing keeping local residents housed.

#### V. THE LAND BANK AS A TOOL FOR EQUITY, JUSTICE, & COMMUNITY DEVELOPMENT

Researchers tout land banks across the country as the solution to the "vacant land" problem they believe arose out of present economic conditions.<sup>141</sup> This fails to recognize the historical and current practices that inform the significant increase in vacant, foreclosed, and abandoned property. The practical implications of systemically barring home ownership in low-income, predominately Black communities directly connects to the social determinants of health and better health outcomes.<sup>142</sup> Affordable housing and the construction of inclusive communities that meet people's needs would directly improve people's health.<sup>143</sup> The COVID-19 pandemic has exposed the direct link between housing and public health, and experts estimate that the pandemic will continue to further exacerbate

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136. Dixon, *supra* note 133.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. See REVITALIZING WITH LAND BANKS, *supra* note 32, at 1–2 (proposing land banks as a solution to post-2008 economic conditions).

142. See Moran-McCabe & Burris, *supra* note 29, at 1443. See also Yael Cannon, *Injustice is an Underlying Condition*, 6 U. PA. J.L. & PUB. AFFS. 201, 246 (2020). Categories of social determinants of health are economic stability, education access and quality, health care access and quality, neighborhood and built environment, and social and community context. See *Social Determinants of Health*, *supra* note 30. The World Health Organization points to many studies that attribute SDOHs for anywhere between 30–55% of health outcomes. See *Social Determinants of Health*, WORLD HEALTH ORG., [https://www.who.int/health-topics/social-determinants-of-health#tab=tab\\_1](https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1) (last visited May 9, 2023).

143. See Moran-McCabe & Burris, *supra* note 29, at 1445. Access to safe and affordable housing includes having access to land without the perils of dealing with lead, rodents, and updated living conditions because these conditions translate to health outcomes for their residents. See Cannon, *supra* note 142, at 250, 259; Emily A. Benfer & Lindsay F. Wiley, *Health Justice Strategies to Combat COVID-19: Protecting Vulnerable Communities During a Pandemic*, HEALTH AFFS. (Mar. 19, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200319.757883/full/>.

existing economic and social disparities that access to housing and health could solve.<sup>144</sup> Answering difficult questions about how to ensure the health and safety of communities requires linking racist historical laws and policies with present social and economic conditions.<sup>145</sup>

Understanding lands banks within this context is crucial because they might seem facially neutral, but their daily operations are informed by legal mechanisms that have proven to be anything but. Recently, the U.S. Department of Housing and Urban Development awarded Michigan \$2.2 million to address and combat housing discrimination.<sup>146</sup> The Fair Housing Center of Metropolitan Detroit will receive \$375,000 to support services in the metro area.<sup>147</sup> While these funds are not specifically allocated for DLBA, the commitment to address housing discrimination should also be adopted and put in the forefront of DLBA's work. They are uniquely positioned to tackle this issue as the largest landowner and purveyor of property power in the city. DLBA's mission purports to center local residents in the drive to ensure that land is bought and developed in the city.<sup>148</sup> By systemically combating housing discrimination, offering land in ways that combats discriminatory practices, shifting to become directly accountable to the public, and pushing for economic and racial justice in the city, DLBA can start to live up to its mission.

*A. How DLBA Could Utilize its Current Framework to Center Equity and Justice*

Though DLBA currently operates in a way that negatively impacts local residents and systemically excludes them from land ownership through their programs, there are solutions within the existing legal framework that could be utilized to drive better developmental and community outcomes. Similar to the Philadelphia land bank, the Detroit Land Bank should be focusing on development without displacement.<sup>149</sup> The most compelling part of DLBA's legal framework is its ability to create conditions for land ownership.<sup>150</sup> DLBA has the power to create conditions that could include developing the property, prioritizing affordable housing, requiring land owners to live on the land, and placing a cap on the resale value of a property.<sup>151</sup> These measures would ensure that the land in

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144. See SEBASTIAN SANDOVAL-OLASCOAGA ET AL., EVICTION MORATORIA EXPIRATION AND COVID-19 INFECTION RISK ACROSS STRATA OF HEALTH AND SOCIOECONOMIC STATUS IN THE UNITED STATES 9 (2021), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2783612>.

145. See Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>; Capps, *supra* note 33.

146. Kirk, *supra* note 14.

147. *Id.*

148. See *Who We Are*, *supra* note 6.

149. See Feldstein, *supra* note 43.

150. See Perkins, *supra* note 5; Brumer, *supra* note 34; *Land Banks*, *supra* note 36; REVITALIZING WITH LAND BANKS, *supra* note 32, at 2–3.

151. See Perkins, *supra* note 5; Brumer, *supra* note 34; *Land Banks*, *supra* note 36; *Revitalizing with Land Banks*, *supra* note 32, at 2–3.

Detroit stays livable and affordable for an average family. While in practice, DLBA struggled with this tool because of lack of equitable enforcement,<sup>152</sup> DLBA could use their power to put more conditions in place that push developers to cultivate the land but discourages speculating and taking advantage of the low land prices without investing in the community.

*B. Systemic Changes to the Land Bank's Legal Framework to Drive Better Practices*

The current DLBA legal framework needs to evolve to center transparency and equity in their work. If DLBA continues to operate in the city, it needs to be directly accountable to the people and pushed to incorporate practices that drive equitable outcomes and community development that directly serves the residents of the city. This Note does not dive deeply into systemic changes, but it offers considerations for a path forward. The recent conversation centered on reparations for Black Americans<sup>153</sup> has expanded to cities testing out reparations for past housing discrimination.<sup>154</sup> This Note puts forth considerations for how DLBA could increase accountability to stakeholders and utilize reparations to address the past housing discrimination faced by Black Detroiters.

1. Accountability to Community Stakeholders

It seems unconscionable that a publicly funded entity would be allowed to operate in such a disconnected manner from the local communities it directly impacts.<sup>155</sup> Given how far reaching its powers, DLBA's practices affect the lives of most Detroiters, whether they want to engage with it or not. As such, DLBA should have more direct accountability to Detroiters. To ensure that it is being transparent with the community, DLBA should report complaints and Board of Directors meetings to the public. Currently, this transparency is not required and makes investigating the practices of the Land Bank difficult.<sup>156</sup> Ensuring that their employees are acting with integrity and not abusing the access to land that that they have been granted is crucial to rebuilding the community's trust.

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152. See Perkins, *supra* note 5.

153. See Coates, *supra* note 145.

154. See Emmanuel Felton, *A Chicago Suburb Promised Black Residents Reparations. Few Have Been Paid.* (Jan. 9, 2023), <https://www.washingtonpost.com/nation/2023/01/09/evanston-reparations-black-residents/>.

155. See Feldstein, *supra* note 43 (describing accountability as one of the key principles when developing the Philadelphia Land Bank).

156. See Land Bank Fast Track Act, Act 258 § 124.752(2) (Mich. 2003), [http://www.legislature.mi.gov/\(S\(h3xsjpyvapwsibpikanbijv3\)\)/documents/mcl/pdf/mcl-258-2003-1.pdf](http://www.legislature.mi.gov/(S(h3xsjpyvapwsibpikanbijv3))/documents/mcl/pdf/mcl-258-2003-1.pdf); INTERGOVERNMENTAL AGREEMENT, *supra* note 56.

## 2. Advocating for Reparations for the City's Over-taxation of Citizens Through Payments or Land Parcels

The land system in Detroit is highly complex and has deep historical roots in the systemic dispossession of land for its low-income and Black residents. This history needs to be addressed and confronted by DLBA as the tool for land development and allocation in the city. The large percentage of vacant and tax-foreclosed land is a direct result of the systemic failures of a city to ensure its people have access to property and home ownership. The tax foreclosure system is particularly egregious when considering the large percentage of land that's been foreclosed on is due to city's excessive over taxation of residents.<sup>157</sup> As it stands now, one of the many criticisms of the DLBA is that it is just sitting on land to speculate and sell it to the highest bidder.<sup>158</sup> DLBA and its employees have expressed the issues it faces with trying to efficiently sell off such vast quantities of land.<sup>159</sup> A practical approach to these issues would be to implement a reparations system for Detroit residents and community organizations to claim title to land as repayment for past displacement and the over taxation of land. This solution would not only ensure that past harm is acknowledged, but that local communities drive the development of the city forward.

## VI. CONCLUSION

The way that we construct our land systems and the terms we use to define "vacant" and "abandoned" land have significant meaning. Conflicts of land ownership and property in Detroit are complicated issues that have deep historical roots and present-day implications. There's been a national shift to land banks to deal with land amounts of vacant and tax delinquent land, but the focus on vacancy erases not only the people that continue to live in these cities, but also the structures and systems that push people off the land to begin with. If the city of Detroit is going to shift power to DLBA, the city needs to, at the bare minimum, hold them accountable to residents. There's an opportunity to shift the collective imagination and redesign how we, as a society, approach land investment and ownership. DLBA can correct historic gatekeeping and dispossession of land in Detroit. As it stands, DLBA fails as a tool of equity and access to land for the typical Detroiter, but it need not continue. Centering land and homeownership for Detroiters can serve to transform Detroit and similar cities into places that are driven and developed by the people that know that land best. It all starts with transforming legal mechanisms to promote sustainable access and equitable practices that center community members in driving the city forward.

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157. See Atuahene & Berry, *supra* note 87, at 886; MacDonald, *supra* note 88.

158. See Perkins, *supra* note 5.

159. See Gallagher, *supra* note 78.