

# SULLIVAN COUNTY LAND BANK CORPORATION

## DEFENSE AND INDEMNIFICATION POLICY

### **SECTION 1. PURPOSE AND AUTHORITY.**

The purpose of this Defense and Indemnification Policy (the "Policy") is to set forth the terms and conditions whereby the Land Bank will defend and indemnify Covered Persons (as defined below).

The New York State Legislature has enacted legislation permitting the public entities, including not-for-profit corporations like the Land Bank, to provide for the defense and indemnification of directors and officers. This Policy implements the statutory intent to provide for (a) the defense and indemnification provisions of officers and directors set forth in Article 7 of the Not-For-Profit Corporation Law of the State of New York (the "Not-For-Profit Law") and (b) the defense and indemnification of officers and Covered Persons of public entities as set forth Article 2, Section 18 of the Public Officers Law of the State of New York ("Public Officers Law"), as well as is reflected in the Land Bank's Certificate of Incorporation and Article VII of its Bylaws.

### **SECTION 2: DEFINITIONS.**

As used herein, the following terms shall have the meaning set forth below.

- A. "Board" shall mean the Board of Directors of the Land Bank.
- B. "Chair" shall mean the Chair of the Board.
- C. "Covered Person" shall mean shall mean any director, officer, employee, volunteer expressly authorized to participate in a publicly sponsored volunteer program, or any other person holding a position by election, appointment or employment in the service of the Land Bank, whether or not compensated. The term "Covered Person" shall, in appropriate circumstances, include a former employee, their estate or judicially appointed personal representative.
- D. "Executive Director" shall mean the Executive Director of the Land Bank, or in the event of a vacancy, the Chair.
- E. "Land Bank" or "SCLBC" shall mean the Sullivan County Land Bank Corporation.

### **SECTION 3: DEFENSE.**

- A. Upon compliance by the Covered Person with the provisions of Section 5 hereof, the Land Bank shall provide for the defense and indemnification of the Covered Person in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the Covered Person was acting during the course of their employment and within the scope of their employment duties. The duty to provide for defense and indemnification shall not arise where such civil action or proceeding is brought by, or at the behest of, the Land Bank, except as otherwise provided by the NFPCL.
- B. Subject to the conditions set forth in this Policy, the Covered Person shall be represented by counsel to the Land Bank. If representation by Land Bank counsel is not appropriate or feasible, an attorney shall be employed or retained by the Land Bank for the defense of the Covered Person whenever (1) the Land Bank does not have Land Bank counsel, (2) the Land Bank determines, based upon its investigation and review of the facts and circumstances of the case,

that representation by the Land Bank counsel would be inappropriate, or (3) a court of competent jurisdiction determines that a conflict of interest exists and that the Covered Person cannot be represented by Land Bank counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the Land Bank to such attorney employed or retained, from time to time, during pendency of the civil action or proceeding, subject to certification by the Chair that the Covered Person is entitled to representation under the terms and conditions hereof. Payment of such fees and expenses shall be made in the same manner as payment of other claims and expenses of the Land Bank. Any dispute with respect to the legal representation of multiple Covered Persons by Land Bank counsel or by an attorney employed or retained for such purposes, or with respect to the amount of the fees or expenses to be paid for such representation shall be resolved by a court upon motion or by way of a special proceeding; and

- C. In the event a Covered Person delivers legal process (for instance, summons, complaint, or notice of claim) and a written request for legal defense to the Land Bank, under Section 5 hereof, the Land Bank shall take appropriate action on behalf of the Covered Person to avoid the entry of a default judgment pending resolution of any question pertaining to the obligation to provide a legal defense.

**SECTION 4: DEFENSE AND INDEMNIFICATION.**

- A. The Land Bank shall indemnify and save harmless a Covered Person in the amount of a judgment obtained against such Covered Person in a state or federal court, or in the amount of any settlement of a claim:
  - i. Provided that the act or omission from which such judgment or claim arose occurred while the Covered Person was acting during the course of their employment and within the scope of their public employment or duties;
  - ii. Provided further that in the case of a settlement, the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by the members of the Board of the Land Bank, or its insurance company. This obligation by the Land Bank to indemnify shall not apply to any claims against officers and Covered Persons of the Land Bank, currently outstanding, or reduced to judgment, or settlement;
- B. Except as otherwise provided by law, this duty to indemnify and save harmless prescribed by this section shall not arise where the injury or damage resulted from intentional wrongdoing, recklessness or criminal acts of the Covered Person;
- C. Nothing in this section shall authorize the Land Bank to defend, indemnify or save harmless a Covered Person with respect to any claims filed, or money recovered from a Covered Person pursuant to Section 51 of the General Municipal Law or for any claims alleging intentional wrongdoing or a reckless act; and
- D. Upon entry of a final judgment against the Covered Person, or upon the settlement of the claim, the Covered Person shall serve a copy of such judgment or settlement, personally or by certified or registered mail within five (5) days of the date of entry or settlement, upon the Chair of the

Land Bank and Land Bank counsel, and if not inconsistent with the provisions of this resolution, the amount of such judgment or settlement shall be paid by the Land Bank.

**SECTION 5: DUTY TO NOTIFY.**

The duty to defend or indemnify and save harmless prescribed herein shall be conditioned upon:

- A. Delivery by the Covered Person to Land Bank counsel and to the Chair of the Land Bank a written request to provide for their defense, together with the original or a copy of any summons, complaint, process, notice, demand or pleading within five (5) days after they receive service of such document, and
- B. The full cooperation of this Covered Person in the defense of such action or proceeding and in defense of any action or proceeding against the Land Bank based upon the same act or omission, and in the prosecution of any appeal.

**SECTION 6: OTHER RIGHTS.**

The benefits conferred in this Policy shall inure only to Covered Persons as deemed herein and shall not enlarge or diminish the rights of any other party nor shall any provision of this Policy be construed to affect, alter or repeal any provision of the Worker's Compensation Law.

**SECTION 7: NOTICE.**

This Policy shall not in any way affect the obligation of any claimant to give notice to the Land Bank under Section Ten of the Court of Claims Act, Section 50 (e) of the General Municipal Law, or any other provisions of law.

**SECTION 8: INSURANCE.**

The Land Bank is hereby authorized and empowered to purchase insurance from any insurance company created by, or under, the laws of the State of New York, or authorized by law to transact business in this state, against any liability imposed by the provisions of this Policy or to act as a self-insurer with respect thereto.

**SECTION 9: PAYMENTS.**

All payments made under the terms of this Policy, whether for insurance or otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.

**SECTION 10: INSURER RIGHTS.**

The provisions of this Policy shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

**SECTION 11: IMMUNITY.**

Except as otherwise specifically provided in this Policy, the provisions of this Policy shall not be

construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to, or conferred upon, any unit, entity, officer or Covered Person of the Land Bank by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.

**SECTION 12: OTHER ENACTMENTS.**

Except as otherwise provided in this Policy, benefits accorded to Covered Persons under this Policy shall supplement and be in addition to, defense or indemnification protection conferred by any other enactment of the Land Bank or common law. Notwithstanding anything contained herein to the contrary, the Land Bank shall be entitled to contribution and/or indemnification by the Covered Person and/or other Land Bank in the event that such other Land Bank is also obligated to provide a defense for the Covered Person and/or pay any sums of monies by way of indemnification and/or judgment or award.

**SECTION 13: APPLICABILITY.**

The provisions of this Policy shall apply to actions or proceedings specified herein which have been commenced on or after the adoption of this Policy.

**SECTION 14: NO DUTY TO DEFEND AND/OR INDEMNIFY.**

- A. Notwithstanding anything to the contrary contained herein, there shall be no duty of the Land Bank to defend or indemnify any Covered Person unless the members of the Board finds (1) that the claim arose during the course of their normal employment and within the scope of their employment in a matter in which the Land Bank had an interest; (2) the Covered Person was acting in discharge of a duty imposed or authorized by law, and (3) the Covered Person acted in good faith and without malice.
- B. In the event the Land Bank assumes the duty of defense and in the event a court determines that the Covered Person acted in bad faith or with malice or in a wanton or willful manner so as to cause the claim, or was not acting in a *bona fide* discharge of their municipal duties, the Covered Person shall reimburse the Land Bank for all expenses incurred for defense of claims arising out of the alleged civil action or civil proceeding. Upon such finding by a court, the Land Bank shall have no duty to satisfy any judgment or claim against the Covered Person, and in the event the Land Bank has satisfied or is ordered to satisfy said judgment or claim, the Covered Person must reimburse the Land Bank for any sum paid for the said satisfaction.

**SECTION 15: SEVERABILITY.**

If any provisions of this Policy or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this Policy, or the application of any such provision to any other person or circumstance.