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May 7, 2008

The Honorable Martin J. O'Malley  
Governor of Maryland  
State House  
Annapolis, Maryland 21401-1991

***Re: House Bill 1555 and Senate Bill 911, "Baltimore City Land Bank Authority"***

Dear Governor O'Malley:

We have reviewed and approve for constitutionality and legal sufficiency both House Bill 1555 and Senate Bill 911, entitled "Baltimore City Land Bank Authority." These bills would grant Baltimore City the express power to establish a land bank authority to acquire properties in a variety of means but principally at tax sale, to waive tax liens, and to aggregate and convey real property for redevelopment. We write to advise you of differences between the two bills and to propose a future non-substantive recodification of the Baltimore City Land Bank Authority.

First, although the bills are substantially similar, there is a substantive difference between the two. Senate Bill 911 restricts the Baltimore City Land Bank Authority to property "purchased, owned, or sold" located within Baltimore City, while there is no similar restriction in House Bill 1555. Therefore, if as a matter of policy you choose to sign this legislation, we recommend that only one of these bills be signed into law.<sup>1</sup>

Second, while the codification of these bills in Article 24 of the Annotated Code of Maryland seems inappropriate, it does not, in our opinion make these bills clearly unconstitutional. Originally, as drafted, both Senate Bill 911 and House Bill 1555 made the creation of a land bank authority available to each county in Maryland, regardless of the form of government employed by that county. As drafted, codification in Article 24 of the Annotated Code of Maryland ("Political Subdivisions-Miscellaneous Provisions") was appropriate as a public general law because each county in Maryland was potentially affected. Only when the bills were amended to offer the power

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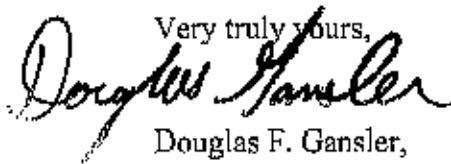
<sup>1</sup>There is an additional, non-substantive difference between the bills. In the Senate Bill, the reference to the Baltimore City Land Bank Authority in § 22-107 was amended to "[t]he authority," while in the House version the same reference was left, as drafted, as "[a]n authority."

to create a land bank authority only to Baltimore City (and not to the other counties), did this codification become inappropriate. Because these bills now create new express powers only for Baltimore City,<sup>2</sup> the appropriate codification is in Article II of the Baltimore City Charter. *See* MD. CONST., Art. XI-A, § 2.<sup>3</sup>

The Court of Appeals, however, has permitted codification of express powers for Baltimore City within the public general laws rather than in Article II of the Baltimore City Charter. *See, e.g., Piscatelli v. Board of Liquor License Comm'rs*, 378 Md. 623, 634 (2003) ("Most of the express powers granted by the General Assembly pursuant to Art. XI-A, § 2, are contained ... in Article II of the Baltimore City Charter .... Some additional express powers are set forth in other public general laws."). Because the creation of a Baltimore City Land Bank Authority will have a statewide, rather than a purely local effect, we believe the law may be considered to be a public general law. *See Tyma v. Montgomery County*, 369 Md 497, 507 (2002). As a result, we do not believe the current codification is clearly unconstitutional.

While this codification may not be unconstitutional, we believe that the better practice is to codify Baltimore City's express powers where a citizen or legislator may expect to find them, in Article II of the Baltimore City Charter. We therefore recommend that these provisions be transferred to that new location by separate legislation or in next year's corrective bill.

Very truly yours,



Douglas F. Gansler,  
Attorney General

DFG/DF/kk

cc: The Honorable Nathaniel J. McFadden  
The Honorable Curt Anderson  
The Honorable Dennis C. Schnepfe  
George Nilson, Baltimore City Solicitor  
Joseph Bryce  
Karl Aro

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<sup>2</sup>These bills grant Baltimore City new express powers to pass an ordinance changing for the Land Bank Authority the State law governing tax sales, § 22-113; to exempt the Land Bank Authority from State taxes, including the recordation tax, § 22-115, and to permit the Land Bank Authority to enter into joint venture arrangements, § 22-105(B).

<sup>3</sup>According to the Maryland Constitution, Baltimore's express powers are supposed to be "set forth in Article 4, Section 6, [of the] Public Local Laws of Maryland." Md. Const., Art. XI-A, §2. Despite this constitutional injunction, those powers are set forth at Article II of the Baltimore City Charter. DAN FRIEDMAN, *THE MARYLAND STATE CONSTITUTION: A REFERENCE GUIDE* 220 (2006).