

HERKIMER COUNTY LAND BANK

WHISTLEBLOWER POLICY

Section 1

General

The Herkimer County Land Bank Corporation (the “Land Bank”) requires all directors, officers, key persons, volunteers, and employees (as defined below) to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. Employees and representatives of the Land Bank must practice honesty and integrity in fulfilling their responsibilities and comply with all applicable laws, rules, and regulations, as well as the Land Bank’s policies and procedures, including the Land Bank’s Code of Ethics.

In furtherance of these standards, and pursuant to Section 715-b of the Not-for-Profit Corporation Law, the Board of Directors of the Land Bank (the “Board”) shall oversee the implementation of, and compliance with, this Whistleblower Policy (the “Policy”).

The Policy’s objectives are to establish policies and procedures for the following:

- (1) Board members, officers, key persons, current or former employees, independent contractors, or volunteers who, in good faith, wish to report, disclose, or attempt to report or disclose, any actual or suspected Concern (as defined below) on a confidential and/or anonymous basis (each of the foregoing a “Complainant”).
- (2) The receipt, retention, and treatment of complaints received by the Land Bank regarding actual or suspected Concerns; and
- (3) The protection of Complainants from retaliatory actions.

Section 2

Application

This Policy applies to all of the Land Bank’s employees, volunteers, independent contractors, officers, key persons, and Board members. Under this Policy, “employees” shall mean individuals who perform services for and under the control and direction of the Land Bank for wages or other remuneration, including former employees and including natural persons employed as independent contractors, and whether on a full-time, part-time, temporary, or probationary basis. The term “key person” shall include any person, other than a Board member or officer, and whether or not an employee, who (a) has responsibilities, or exercises powers or influence over the Land Bank as a whole, similar to the responsibilities, powers, or influence of Board members and officers; (b) manages the Land Bank or a segment of it representing a substantial portion of its activities, assets, income or expenses; or (c) alone or with others, controls or determines a substantial portion of the Land Bank’s capital expenditures or operating budget.

Section 3

Reporting Responsibility

Each director, officer, key person, volunteer, and employee (as defined above) of the Land Bank, as well as any person having business dealings with the Land Bank, has an obligation to promptly report in accordance with this Policy the following matters: (a) questionable or improper accounting or auditing matters; (b) violations and suspected violations of the Land Bank’s Code of Ethics and/or Conflicts of Interest Policy; (c) information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or Board member concerning the Land Bank’s investments, travel, acquisition of real or personal property, the disposition of real or personal property, and the procurement of goods and services; and (d) illegal, dishonest, or fraudulent acts (including, without limitation, actual or suspected violations of any duly enacted federal, state, or local statutes, ordinances, or executive orders; of any rules or regulations promulgated pursuant to such

statutes, ordinances, or executive orders; or of any judicial or administrative decisions, rulings, or orders) or any violations of the Land Bank's other policies or procedures (each of the foregoing a "Concern").

Section 4

Authority of Audit Committee

All reported Concerns will be forwarded to the Audit Committee in accordance with the procedures set forth herein. The Audit Committee shall be responsible for promptly investigating and making appropriate recommendations to the Board with respect to all reported Concerns.

Section 5

No Retaliation

This Whistleblower Policy is intended to encourage and enable directors, officers, key persons, volunteers, and employees to raise Concerns within the Land Bank for prompt investigation and appropriate action. With this goal in mind, no Complainant who, in good faith, reports a Concern shall be subject to retaliation or, in the case of an employee, adverse employment consequences. Under this Policy, "good faith" means that the individual making the disclosure reasonably believes such information to be true and reasonably believes that it indicates an actual or suspected Concern. Additionally, no director, officer, key person, volunteer, or employee of the Land Bank shall interfere with the right of any Complainant by any improper means aimed at deterring disclosure of an actual or suspected Concern. Any such attempts at retaliation or interference are strictly prohibited. Specifically, the Land Bank shall not retaliate against a Complainant because the Complainant has done any of the following:

- (1) disclosed, or threatened to disclose, to a supervisor or to a public body an activity, policy, or practice that the Complainant reasonably believes is a Concern or that the Complainant reasonably believes poses a substantial and specific danger to the public health or safety;
- (2) provided information to, or testified before, any public body conducting an investigation, hearing, or inquiry into any such activity, policy, or practice by the Land Bank; or
- (3) objected to, or refused to participate in, any such activity, policy, or practice.

The protection against retaliatory action pertaining to disclosure to a public body (in the first category of protected activities listed above) shall not apply unless the employee has made a good faith effort to bring the activity, policy, or practice to the attention of a supervisor of the Land Bank and has afforded the Land Bank a reasonable opportunity to correct such activity, policy, or practice. However, this good faith effort requirement shall not apply where:

- (1) there is an imminent and serious danger to the public health or safety;
- (2) the employee reasonably believes that reporting to the supervisor would result in a destruction of evidence or other concealment of the activity, policy, or practice;
- (3) such activity, policy, or practice could reasonably be expected to lead to endangering the welfare of a minor;
- (4) the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or
- (5) the employee reasonably believes that the supervisor is already aware of the activity, policy, or practice and will not correct such activity, policy or practice.

Under this Policy, “retaliation” shall include, but shall not be limited to, the following actions taken by the Land Bank or its agents: (a) to intimidate, harass, discriminate, discharge, threaten, penalize, suspend, demote, or in any other manner take an adverse employment action (including any action affecting transfer, assignment, reassignment, reinstatement, or performance evaluation) against any employee or former employee exercising his or her rights under this Policy; (b) to take any actions, or threaten to take such actions, that would adversely impact a former employee’s current or future employment; or (c) to contact, or threaten to contact, the United States immigration authorities, or otherwise report or threaten to report an employee’s suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee’s family or household member, to a federal, state, or local agency.

Lastly, a Land Bank Board member, volunteer, or employee who retaliates against or attempts to interfere with a Complainant will be subject to a thorough investigation by the Land Bank as well as discipline up to and including removal from the Board position, dismissal from the volunteer position, or termination of employment. Any allegation of retaliation or interference will be taken and treated seriously and independently of the outcome of the initial complaint, which will be treated as a separate matter.

Section 6

Procedures for Reporting Concerns

Employees

Employees should first promptly discuss their Concern with their immediate supervisor. If, after speaking with his or her supervisor, the individual continues to have a good-faith belief that the Concern is valid, the individual should report the Concern to the Audit Committee. Additionally, if the individual is uncomfortable speaking with his or her supervisor, or the supervisor is a subject of the Concern, the individual should report his or her Concern directly to the Audit Committee.

If the Concern was reported verbally to the employee’s immediate supervisor, the reporting individual, with assistance from the supervisor, shall reduce the Concern to writing. The supervisor is then required to promptly report the Concern to the Chair of the Audit Committee, who has the specific and exclusive responsibility to investigate all Concerns. The Chair of the Audit Committee shall investigate and handle all Concerns in a timely and reasonable manner, which may include referring such information to the New York State Authorities Budget Office or an appropriate law enforcement agency when applicable. Contact information for the Chair of the Audit Committee may be obtained through the Executive Director or Board Chairman or President. Concerns may also be submitted anonymously, if in writing and sent directly to the Chair of the Audit Committee at:

Herkimer County Land Bank Corporation
Attn: Chair, Audit Committee
109 Mary Street, Suite 1310
Herkimer, New York 13350

Lastly, should a Complainant believe in good faith that disclosing information within the Land Bank would likely subject him or her to adverse personnel action or be wholly ineffective, the Complainant may instead disclose the Concern to the New York State Authorities Budget Office or an appropriate law enforcement agency, if applicable. The Authorities Budget Office’s toll-free number (1-800-560-1770) should be used in such circumstances.

Directors and Other Volunteers

A Complainant who is a member of the Board or who is a volunteer should submit Concerns in writing directly to the Chair of the Audit Committee. Contact information for the Chair of the Audit Committee may be obtained from the Executive Director.

Section 7

Handling of Reported Concerns

The Audit Committee shall address all reported Concerns. The Chair of the Audit Committee shall immediately notify the Audit Committee, the Chairman/President, and the Executive Director, of any such report. The Chair of the Audit Committee will notify the Complainant and acknowledge receipt of the Concern within five (5) business days, if possible. It will not be possible to acknowledge receipt of anonymously submitted Concerns.

All reports will be promptly investigated by the Audit Committee and appropriate corrective action will be recommended to the Board, if warranted by the investigation. However, any director who is also an employee may not participate in any Board or committee deliberations or voting relating to administration of this Policy. Furthermore, the person who is the subject of a Concern shall not be present at, nor participate in, Board or committee deliberations, or vote on any matter relating to such Concern, provided, however, that the foregoing shall not prohibit the Board or committee from requesting that the person who is the subject of the Concern from present background or answer questions at a committee or Board meeting prior to the commencement of deliberations or voting relating thereto.

In addition, action taken must include a conclusion and/or follow-up with the Complainant for complete closure of the Concern. The Audit Committee has the authority to retain outside legal counsel, accountants, private investigators, or any other resource deemed necessary to conduct a full and complete investigation of the allegations.

Section 8

Acting in Good Faith

Anyone reporting a Concern must act in good faith and have reasonable grounds for believing the information disclosed indicates an actual or suspected Concern. The act of making allegations that prove to be unsubstantiated, and that prove to have been made maliciously, recklessly, or with the foreknowledge that the allegations are false, will be viewed as a serious disciplinary offense and may result in discipline, up to and including dismissal from the volunteer position, termination of employment, or termination of board service. Such conduct may also give rise to other actions, including civil lawsuits.

Section 9

Confidentiality

Reports of Concerns, and investigations pertaining thereto, shall be kept confidential, to the extent possible consistent with the need to conduct an adequate investigation. Disclosure of reports of Concerns to individuals not involved in the investigation will be viewed as a serious disciplinary offense and may result in discipline, up to and including termination of employment, volunteer opportunity, or Board service. Such conduct may also give rise to other actions, including civil lawsuits.

A copy of this Policy shall be conspicuously posted on the Land Bank's website and distributed to all directors, officers, key persons, employees (including independent contractors), and any volunteers who provide substantial services to the Land Bank. The link to this Policy will be sent with each executed contract to applicable vendors. For purposes of this paragraph, posting the Policy on the website and in conspicuous places, including outside of the offices of the Executive Director as these locations are accessible to employees and volunteers and are among the methods the Land Bank may use to satisfy the distribution requirement.

Further, the Land Bank shall inform its employees of their protections, rights, and obligations under New York Labor Law § 740 by posting a notice thereof conspicuously in easily accessible and well lighted places customarily frequented by employees and applicants for employment.

Section 10

Other Legal Rights Not Impaired

The policies and procedures set forth herein are not intended to limit, diminish, or impair any other rights or remedies that an individual may have under the law with respect to disclosing potential wrongdoing free from retaliation or adverse personnel action.

(1) Specifically, these policies and procedures are not intended to limit any rights or remedies that an individual may have under the laws of the State of New York, including but not limited to the following provisions: Civil Service Law § 75-b, Labor Law § 740, State Finance Law § 191 (commonly known as the “False Claims Act”), and Executive Law § 55(1).

(2) With respect to any rights or remedies that an individual may have pursuant to Civil Service Law § 75-b or Labor Law § 740, any employee who wishes to preserve such rights shall prior to disclosing information to a government body, have made a good-faith effort to provide the appointing authority or their designee the information to be disclosed and shall provide the appointing authority or designee a reasonable time to take appropriate action unless there is imminent and serious danger to public health or safety. (See Civil Service Law § 75-b[2][b]; Labor Law § 740[3]).