

Act Establishing the Martha’s Vineyard Housing Bank

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1: For purposes of this act, the words and phrases set forth in this section
2 shall have the following meanings:

3 “Anti-flipping restriction”, a restriction that limits the time and price at which a real
4 property interest or real property in connection with which a real property interest is held may be
5 transferred following receipt of the real property interest from the housing bank or the receipt of
6 housing bank funding with respect to the real property interest, as shall be set forth in regulations
7 adopted by the commission. Any person who transfers a real property interest in contravention of
8 an anti-flipping restriction shall pay a penalty equal to 100 per cent of the amount of housing
9 bank funding received and 100 per cent of the amount by which the purchase price exceeds the
10 permissible purchase price established by the commission’s regulations.

11 “Area median income”, the median income for Dukes County, with adjustments made for
12 smaller and larger families, as such median income shall be determined from time to time by the
13 United States Department of Housing and Urban Development.

14 “Commission”, the Martha’s Vineyard housing bank commission established by section
15 3.

16 "Community housing", rental and ownership housing units for use as year-round housing
17 by those residents of Martha's Vineyard earning up to 240 per cent of area median income, or
18 such lower limit determined by the Commission with respect to, or otherwise applicable to,
19 particular housing units.

20 “Community housing restriction”, a perpetual restriction, whether or not stated in the
21 form of a restriction, easement, covenant or condition in any deed, mortgage, will, agreement, or

22 other instrument limiting the use of real property or housing units to occupancy for community
23 housing.

24 “Housing bank”, the Martha’s Vineyard housing bank established by section 2.

25 "Legal representative", with respect to any person, shall mean any other person acting
26 under a written power-of-attorney executed by that person; provided, however, that any affidavit
27 attesting to the true and complete purchase price of a real property interest, submitted to the
28 commission pursuant to section 15, may also be signed on behalf of that person by an attorney
29 admitted to practice in the commonwealth.

30 “New Construction”, construction of a new building that is not attached to an existing
31 building.

32 “Previously Developed Property”, land with an existing building or buildings or which
33 had a building or buildings during the 50 years prior to the date that an application for Housing
34 Bank funding is submitted pursuant to section 11.

35 “Purchaser”, the transferee, grantee or recipient of any real property interests.

36 “Purchase price”, all consideration paid or transferred by or on behalf of a purchaser to a
37 seller or a seller’s nominee, or for the seller’s benefit, for the sale, lease, exchange, or transfer of
38 any real property interest, and shall include, but not be limited to: (i) all cash or its equivalent so
39 paid or transferred; (ii) all cash or other property paid or transferred to discharge or reduce any
40 obligation of the seller; (iii) the principal amount of all notes or their equivalent, or other
41 deferred payments, given or promised to be given to the seller or the seller’s nominee; (iv) the
42 outstanding balance of all obligations of the seller which are assumed by the purchaser or to
43 which the real property interest transferred remains subject after the transfer, determined at the
44 time of transfer, but excluding real estate taxes and other municipal liens or assessments which

45 are not overdue at the time of transfer; and (v) the fair market value, at the time of transfer, of
46 any other consideration or thing of value paid or transferred, including, but not limited to, any
47 property, goods or services paid, transferred or rendered in exchange for such real property
48 interest.

49 "Real property interest", any present or future legal or equitable interest in or to real
50 property, and any beneficial interest therein, including the interest of any beneficiary in a trust
51 which holds any legal or equitable interest in real property, the interest of a partner or member in
52 a partnership or limited liability company which holds any legal or equitable interest in real
53 property, the interest of a stockholder in a corporation which holds any legal or equitable interest
54 in real property, the interest of a holder of an option to purchase real property, the interest of a
55 buyer or seller under a contract for purchase and sale of real property, the transferable
56 development rights created under chapter 183A of the General Laws; the dominant estate in any
57 easement or right of way, the right to enforce any restriction, an estate at will or at sufferance, or
58 an estate for years or leasehold interest.

59 "Seller", the transferor, grantor or immediate former owner of any real property interests.

60 "Shared appreciation equity loan," a loan agreement pursuant to which the housing bank
61 receives a percentage of a property's appreciation upon transfer for consideration.

62 "Time of transfer", of any real property interest shall mean, the time at which such
63 transfer is legally effective as between the parties thereto, and, in any event, with respect to a
64 transfer evidenced by an instrument recorded with the appropriate registry of deeds or filed with
65 the assistant recorder of the appropriate registry district, not later than the time of such recording
66 or filing.

67 “Town advisory board”, a town board created in each member town to assist the
68 commission in administering this act, each to consist of 1 representative duly appointed, either
69 from its membership or otherwise, by each of the following town boards: select board,
70 conservation commission, planning board, zoning board, board of assessors, housing committee,
71 board of health and, if one exists, wastewater committee. ~~and 2 appointed by the housing~~
72 ~~committee.~~ Should a position become vacant, a member appointed by the respective board to
73 complete the unexpired term shall fill said vacancy. Members shall hold 3-year staggered terms
74 with the length of the terms of each of the initial town advisory board members to be designated
75 by the town select board. All decisions of the town advisory boards shall be by two-thirds vote of
76 those present and voting at a meeting at which a majority of the members is present.

77 “Transfer price restriction”, a perpetual restriction, whether or not stated in the form of a
78 restriction, easement, covenant or condition in any deed, mortgage, will, agreement, or other
79 instrument limiting the price at which real property may be transferred or the rental rates that
80 might be charged, based on a formula as shall be set forth in regulations adopted by the
81 commission.

82 “Year-round housing”, shall be as defined in regulations adopted by the commission;
83 provided that year-round housing shall not include housing units in which the primary occupants
84 reside for less than 11 months during any 1-year period.

85 “Year-round housing restriction”, a perpetual restriction whether or not stated in the form
86 of a restriction, easement, covenant or condition in any deed, mortgage, will, agreement, or other
87 instrument limiting the use of the real property to occupancy for year-round housing.

88 SECTION 2: There shall be a Martha’s Vineyard housing bank, to be administered by a
89 commission established by section 3, for the purpose of creating and preserving both year-round

90 housing and community housing. The housing bank shall be a body politic and corporate and a
91 public instrumentality, and the exercise of the powers herein conferred upon the housing bank
92 shall be deemed to be the performance of an essential governmental function.

93 SECTION 3: (a) The housing bank shall be administered by a commission
94 consisting of: 1 town-representative member elected by each of the member towns, each of
95 whom shall be a legal resident of the member town he or she represents; and 1 at-large member
96 elected by island-wide vote who shall be a legal resident of Martha's Vineyard. Each town-
97 representative member shall be elected to a 3-year term in the same manner as other elected town
98 officials. Notwithstanding the foregoing, (a) the commission shall initially consist of: 1 town-
99 representative member appointed by the select board of each of the member towns, to serve until
100 the first election of a town-representative member at such town's regular or special town election
101 following the effective date of this act, and (b) the terms of the initial town-representative
102 members elected as set forth herein shall be drawn by lot by representatives appointed by the
103 member towns' select boards prior to the first election of any town-representative member, and
104 shall be staggered so that, as nearly as possible, an equal number of terms expire each year
105 following the first election of town-representative members. The initial at-large member shall be
106 appointed by the county commissioners to serve from the effective date of this act until the first
107 election of the at-large member following the effective date of this act. The election of the at-
108 large member of the commission shall be conducted at the biennial state election in ~~2022~~/2024
109 and succeeding elections of the at-large member shall take place at the biennial state election.
110 The nomination of candidates for election to such office shall be in accordance with sections 6
111 and 8 of chapter 53 of the General Laws; provided, however, that no more than 10 signatures of
112 voters shall be required on the nomination papers for such office. Notwithstanding the provisions

113 of section 10 of chapter 53 of the General Laws, nomination papers for said candidates shall be
114 filed with the office of the state secretary on or before the tenth Tuesday preceding the day of the
115 election. Such nomination papers shall be subject to the provisions of section 7 of said chapter
116 53. Upon election or appointment to the commission, the at-large commission member shall be
117 sworn to the faithful execution of his or her duties by the town clerk of the town in which he or
118 she resides.

119 (b) Should a vacancy occur during the term of any town-representative member, the
120 select board of the town represented by such member shall appoint an interim member to serve
121 for the unexpired portion of the term. Should a vacancy occur during the term of the at-large
122 member, the county commissioners shall appoint an interim member to serve for the unexpired
123 portion of the term.

124 (c) The commission shall elect a chair and a vice chair from among its members and shall
125 elect a secretary and a treasurer who may be the same person, but who need not be members of
126 the commission.

127 (d) Decisions of the commission shall be by majority vote of those present and voting at a
128 meeting at which a majority of the members is present.

129 (e) If approved by each town advisory board, members of the commission may be paid a
130 stipend, provided that such stipend shall not exceed \$2,000 annually unless a higher amount is
131 both authorized by a majority vote of town meeting in each member town and approved by each
132 town advisory board.

133 (f) The commission shall keep accurate records of its meetings and actions and shall file
134 an annual report which shall be distributed with the annual report of each member town.

135 (g) No person shall serve concurrently as a member of the commission and a town
136 advisory board.

137 SECTION 4: The commission shall have the power and authority to:

138 (a) acquire, by purchase, lease, gift, grant, contribution, devise or transfer from any
139 person, firm, corporation or other public or private entity, any real property interest, including a
140 year-round restriction, within any of the member towns; provided, however, that the commission
141 shall, in considering any such acquisition, use as guidelines town or regional master plans,
142 wastewater plans, watershed management plans, open space plans, and climate and energy goals;

143 (b) acquire, by purchase, gift, grant, contribution, devise or transfer, personal property,
144 and accept and receive money, by gift, grant, contribution, devise or transfer, from any person,
145 firm, corporation or other public or private entity, including but not limited to grants of funds or
146 other property tendered to the housing bank in connection with any ordinance or by-law or any
147 general or special law or any other source;

148 (c) sell, lease, exchange, transfer or convey any real property interest or personal property
149 at public auction or by private contract for such consideration and on such terms as to credit or
150 otherwise as the commission may determine, subject to restrictions as described in section 12;

151 (d) subject to the requirements described in section 11, extend grants, loans, guarantees,
152 lines of credit, interest subsidies, rental assistance, or any other means of funding the
153 commission deems advisable to further the goals of the housing bank;

154 (e) execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases,
155 covenants, contracts, promissory notes, releases, grant agreements and other instruments sealed
156 or unsealed, necessary, proper or incident to any transaction in which the commission engages
157 for the accomplishment of the purposes of the housing bank;

158 (f) incur debt by pledging the full faith and credit of the housing bank subject to the
159 limitations set forth in this act, provided that the commission may incur debt only to the extent
160 that its projected annual debt service obligation prior to maturity with respect to any existing and
161 any new debt will not, in the aggregate, exceed 10 per cent of the average annual revenues
162 received by the housing bank during its prior three fiscal years, commencing with the initial
163 partial fiscal year following the effective date of this act; and provided further that, for the
164 purpose of determining the housing bank's projected annual debt service obligation, any interest
165 other than a fixed rate shall be calculated as the rate payable for the most recent 12 month period,
166 or the period for which the indebtedness has been outstanding if less than 12 months, and the rate
167 payable on the date that the indebtedness is incurred for any new indebtedness;

168 (g) hire such staff and obtain such professional services as are necessary in order to
169 perform its duties; and

170 (i) after holding a public hearing and after requesting recommendations from the town
171 advisory board of each of the member towns, adopt, amend or rescind such rules, regulations and
172 procedures as the commission deems necessary or appropriate to carry out the provisions of this
173 act.

174 Notwithstanding anything herein to the contrary, any expenditure or use of housing bank
175 funds, including any loans or disbursement of down payment assistance provided by the housing
176 bank, and any acquisition of a real property interest, whether by purchase, lease, gift, grant,
177 contribution, devise or transfer, shall require approval by the town advisory board or boards in
178 the town or towns in which the project will be located or in which a real property interest will be
179 acquired.

180 SECTION 5. Each member town is hereby authorized to appropriate money to be
181 deposited in the fund as provided in section 13.

182 SECTION 6. The housing bank is hereby empowered to issue its bonds and notes,
183 including notes in anticipation of bonds, for the purpose of acquiring real property interests and
184 providing funding as provided in section 4(d). The proceeds of such bonds or notes may be used
185 to pay, in whole or in part, acquisition costs; to provide reserves for debt service and other
186 expenses; to pay consulting, appraisal, advisory and legal fees and costs incidental to the
187 issuance and sale of such bonds or notes; to purchase, refund or renew bonds or notes previously
188 issued; and to pay any other costs and expenses of the housing bank necessary for the
189 accomplishment of its purposes. Bonds or notes issued under this act shall be authorized by the
190 commission which shall have full power and authority to determine the amount, form, terms,
191 conditions, provisions for the payment of interest and all other details thereof and to provide for
192 their sale and issuance at such price and in such manner as the commission shall determine,
193 subject only to any limitations set forth in this act; provided, however, that the issuance of bonds
194 or notes by the commission shall require the approval of two-thirds of the town advisory boards.
195 All bonds or notes issued hereunder shall be payable solely from the fees and other revenues of
196 the housing bank pledged to their payment and shall not be deemed a pledge of the full faith and
197 credit of any town in the county of Dukes County, the county of Dukes County, or the
198 commonwealth.

199 The commission may enter into any agreements, including without limitation a loan
200 agreement and a trust agreement, necessary to effectuate and to secure any bonds or notes issued
201 by the housing bank. Such agreements may pledge or assign, in whole or in part, the revenues
202 and other money held or to be received by the housing bank. Such agreements may contain

203 provisions for protecting and enforcing the rights, security and remedy of the holders of such
204 bonds or notes, including, without limiting the generality of the foregoing, provisions defining
205 defaults and providing for remedies in the event thereof which may include the acceleration of
206 maturities and covenants setting forth the duties of, and limitations on, the housing bank in
207 relation to the custody, safeguarding, investment and application of money, the issuance of
208 additional debt obligations, the use of any surplus proceeds of the borrowing, including any
209 investment earnings thereon, and the establishment of special funds and reserves.

210 The pledge of any such agreement shall be valid and binding and shall be deemed
211 continuously perfected for the purposes of the Uniform Commercial Code from the time when
212 the pledge is made; the revenues, money, rights and proceeds so pledged and then held or
213 thereafter acquired or received by the housing bank shall immediately be subject to the lien of
214 such pledge without any physical delivery or segregation thereof or further act; and the lien of
215 any such pledge shall be valid and binding against all parties having claims of any kind in tort,
216 contract or otherwise against any member town or the county of Dukes County, irrespective of
217 whether such parties have notice thereof. No document by which a pledge is created need be
218 filed or recorded except in the records of the housing bank and no filing need be made under the
219 Uniform Commercial Code.

220 The trustee with respect to any such trust agreement entered into pursuant to this section
221 shall be a trust company or a bank having the powers of a trust company within the
222 commonwealth. Any such trust agreement may provide that any money received thereunder may
223 be held, deposited or invested by the trustee, notwithstanding the provisions of section 13,
224 pending the disbursement thereof, in any deposits or investments which are lawful for the funds
225 of savings banks and shall provide that any officer with whom or any bank or trust company with

226 which such money shall be deposited shall act as trustee of such money and shall hold and apply
227 the same for the purposes hereof and thereof, subject to such regulation or limitation as this act
228 or such trust agreement may provide.

229 It shall be lawful for any bank or trust company within the commonwealth to act as
230 depository of the proceeds of bonds or notes, revenues or other money hereunder and to furnish
231 such indemnifying bonds or to pledge such security, if any, as may be require by the
232 commission. Any trust agreement entered into pursuant to this section may set forth the rights
233 and remedies of the holders of any bonds or notes and of the trustee and may restrict the
234 individual right of action by any such holders. In addition to the foregoing, any such trust
235 agreement may contain other such provisions as the commission may deem reasonable and
236 proper. All expenses incurred in carrying out the provisions of such trust agreement may be (i)
237 treated as part of the cost of operation of the housing bank and (ii) paid from the revenues or
238 other funds pledged or assigned to the payment of the principal of and the premium, if any, and
239 interest on the bonds or notes or from any other funds available to the housing bank. In addition
240 to other security provided herein or otherwise by law, bonds or notes issued under this section
241 may be secured, in whole or in part, by insurance or by letters or lines of credit or other credit
242 facilities issued to the housing bank by any bank, trust company or other financial institution,
243 within or without the commonwealth, and the housing bank may pledge or assign any of its
244 revenues as security for the reimbursement by the housing bank to the issuers of such letters or
245 lines of credit, insurance or credit facilities of any payments made hereunder.

246 SECTION 7. Bonds and notes issued under the provisions of this act are hereby made
247 securities in which all public officers and public bodies of the commonwealth and its political
248 subdivisions, all insurance companies, trust companies in their commercial departments, savings

249 banks, cooperative banks, banking associations, investment companies, executors,
250 administrators, trustees and other fiduciaries may properly and legally invest funds, including
251 capital in their control or belonging to them. Such bonds and notes are hereby made securities
252 which may properly and legally be deposited with and received by any state or municipal officer
253 or any agency or political subdivision of the commonwealth for any purpose for which the
254 deposit of bonds or obligations of the commonwealth is now or may hereafter be authorized by
255 law.

256 SECTION 8. Notwithstanding any of the provisions of this act or any recitals in any
257 bonds or notes issued under this act, all such bonds and notes shall be deemed to be investment
258 securities under the Uniform Commercial Code.

259 SECTION 9. The housing bank and all its revenues, income and real and personal
260 property used solely by the housing bank in furtherance of its public purposes shall be exempt
261 from taxation and from betterments and special assessments and the housing bank shall not be
262 required to pay any tax, excise or assessment to or for the commonwealth or any of its political
263 subdivisions. Bonds and notes issued by the housing bank, their transfer and the income
264 therefrom, including any profit made on the sale thereof, shall at all times be exempt from
265 taxation within the commonwealth. The provisions of section 27C of chapter 29 of General Laws
266 shall not apply to this section or any other provisions of this chapter.

267 SECTION 10. ~~The~~ Housing bank funding shall address the greatest community need as
268 determined from time to time by the commission according to prevailing data, and subject to the
269 provisions of this act. Not less than 75 per cent of the expenditures and funding commitments
270 approved by the commission in any fiscal year shall be allocated to activities or projects on

271 ~~properties~~ previously developed properties with existing buildings, or to fund infrastructure,
272 including wastewater disposal and utilities, associated with such ~~projects~~ properties.

273 The commission shall require that all projects funded in whole or part by the housing
274 bank under section 11 minimize disturbances to the local ecology. New construction funded in
275 whole or part by the housing bank shall: (i) protect land classified by the United States
276 Department of Agriculture Natural Resources Conservation Service, or any successor agency, as
277 prime farmland; (ii) not be in priority habitat areas as defined by the Massachusetts Endangered
278 Species Act, or any successor act; (iii) be prohibited from using fossil fuels on site except as
279 needed during construction, renovation, repair, temporary use for maintenance, or vehicle use.
280 ~~All new construction funded in whole or in part by the housing bank shall be required to (i); (iv)~~
281 ~~achieve a home energy rating service rating of zero; and (ii)(v), to the maximum extent possible,~~
282 ~~produce no new net nitrogen pollution~~ to the maximum extent that evolving technology allows,
283 and, if necessary, provide nitrogen offset mitigation according to then-current Martha's Vineyard
284 Commission standards. ~~New construction~~ Projects on undeveloped properties of more than five
285 acres funded in whole or part by the housing bank shall be required to (i) preserve a minimum of
286 40 per cent of the property as open space, and (ii) minimize tree removal. The foregoing
287 requirements shall apply to all units in a project receiving housing bank funding including
288 income-restricted, market-rate, and other units. Satisfaction of each of the provisions of this
289 section shall be as determined by the commission.

290 SECTION 11. Grants, loans, guarantees, lines of credit, interest subsidies, rental
291 assistance, or any other means of funding provided pursuant to section 4(d) shall be made in
292 accordance with this section. The housing bank shall solicit applications for activities and
293 projects within its member towns through a competitive process, which shall include annual

294 public notice of funding availability. Only activities and projects that create, preserve or support
295 perpetual year-round housing, community housing or housing-related infrastructure that serves
296 perpetual year-round housing or community housing, shall be eligible for funding. Eligible
297 activities and projects shall include:

- 298 (a) purchase and rehabilitation of existing structures;
- 299 (b) construction of rental and ownership housing, including on-site or off-site
300 infrastructure;
- 301 (c) purchase of real property interests, including easements;
- 302 (d) down payment assistance, grants, and loans including shared appreciation equity
303 loans, on such terms as the commission may determine from time to time;
- 304 (e) rental assistance programs;
- 305 (f) modernization and capital improvements of existing rental and ownership
306 housing;
- 307 (g) creation of apartments and other ancillary housing;
- 308 (h) housing counseling, predevelopment costs and technical assistance associated
309 with creating community housing or housing-related infrastructure; and
- 310 (i) mixed-use development projects.

311 In selecting proposals for funding, the commission shall prioritize proposals that: (i) are
312 close to existing services; (ii) consist of infill development; (iii) reduce nitrogen loading on
313 developed properties; ~~are not in priority habitat areas as defined under the Massachusetts~~
314 ~~Endangered Species Act, or any successor act;~~ (iv) are located on developed properties; and ~~(iii)~~
315 (v) mitigate the effects of climate change, such as projects which (a) do not involve acquisition
316 of fossil fuel equipment and (b) have a master plan to delineate a path to fossil-fuel free

317 operation and net-zero annual site energy consumption. In considering projects for funding, the
318 commission shall use as guidelines town or regional master plans, wastewater plans, watershed
319 management plans, open space plans, and climate and energy goals.

320 SECTION 12. Anti-flipping restrictions shall be imposed on all activities and projects
321 receiving housing bank funding pursuant to section 11, any housing units created, rehabilitated
322 or acquired pursuant to this act, and any sale, lease, exchange, transfer or conveyance of real
323 property by the housing bank, and additional restrictions shall be imposed as set forth in this
324 section. Year-round housing restrictions shall be imposed in connection with the extension of
325 loans or grant of down payment assistance. In all other circumstances in which the housing bank
326 provides funding pursuant to section 11, or sells, leases, exchanges, transfers or conveys real
327 property, or housing units are created, rehabilitated or acquired pursuant to this act, the activity
328 or project, the real property, and any such housing units shall be subject to year-round housing
329 restrictions, community housing restrictions, and transfer price restrictions. Notwithstanding
330 anything herein to the contrary, Housing Bank funds may be used to pay for nitrogen offset
331 mitigation associated with a project funded pursuant to Section 11 on such terms and conditions,
332 and subject to only such restrictions, as the Commission may determine appropriate in each case.

333 Any community housing restriction, year-round housing restriction, transfer price
334 restriction or anti-flipping restriction held by the commission pursuant to this chapter shall be
335 construed as a restriction held by a governmental body with the benefit of section 26 of chapter
336 184 of the General Laws and shall not be limited in duration by any rule or operation of law, but
337 shall run in perpetuity. Notwithstanding any general or special law to the contrary, any
338 community housing restriction, year-round housing restriction, transfer price restriction or anti-
339 flipping restriction imposed by the commission pursuant to this chapter, whether or not held by

340 the commission, shall be deemed to be an affordable housing restriction within the meaning of
341 section 31 of chapter 184 of the General Laws and shall not be limited in duration by any rule or
342 operation of law, but shall run in perpetuity.

343 SECTION 13. The commission shall meet its financial obligations by drawing upon a
344 fund, to be set up as a revolving or sinking account within the treasury of the county of Dukes
345 County. Deposits into the fund shall include (a) funds appropriated, borrowed or transferred to be
346 deposited into the fund by vote of the county commissioners of the county of Dukes County or of
347 town meetings of the member towns; (b) voluntary contributions of money and other liquid
348 assets to the fund; (c) revenues from fees imposed upon the transfer or real property interests as
349 set forth in section 15 occurring after the effective date of this act; (d) proceeds from the
350 disposition of personal property, real property interests or other assets of the housing bank; and
351 (e) proceeds of loans made by the housing bank. Grants or gifts of money or other assets to the
352 housing bank shall be expended only for the purposes of the grant or gift and subject to any
353 restrictions or limitations imposed thereon by the grantor or donor thereof.

354 All expenses lawfully incurred by the commission in carrying out the provisions of this
355 act shall be evidenced by proper vouchers and shall be paid by the county treasurer of said
356 county only upon submission of warrants duly approved by the commission. The county
357 treasurer of said county shall prudently invest available assets of the fund in accordance with the
358 regulations and procedures adopted by the commission and all income thereon shall accrue to the
359 fund.

360 SECTION 14. The commission, or its designee, shall keep a full and accurate account of
361 its actions including a record as to when, from or to whom, and on what account money has been
362 paid or received under this act. These records shall be subject to examination by the director of

363 accounts or the director’s agent. There shall be an annual audit conducted by a duly recognized
364 accounting firm and a copy of said audit distributed to the select board of each member town.
365 The Dukes County treasurer shall keep a full and accurate account stating when, from or to
366 whom, and on what account money has been paid or received relative to the activities of the
367 commission and the housing bank.

368 SECTION 15. There is hereby imposed a fee equal to 2 per cent of the purchase price
369 upon the transfer of any real property interest with respect to any real property located in a
370 member town or towns. Said fee shall be the liability of the purchaser of such real property
371 interest, and any agreement between the purchaser and the seller or any other person with
372 reference to the allocation of the responsibility for bearing said fee shall not affect such liability
373 of the purchaser. Such fee shall be paid to the commission or its designee, and shall be
374 accompanied by a copy of the deed or other instrument evidencing such transfer, if any, and an
375 affidavit signed under oath or under the pains and penalties of perjury by the purchaser or the
376 purchaser’s legal representative, attesting to the true and complete purchase price and the basis,
377 if any, upon which the transfer is claimed to be exempt in whole or in part from the fee imposed
378 hereby. The commission or its designee shall promptly thereafter execute and issue a certificate
379 indicating that the appropriate fee has been paid or that the transfer is exempt from the fee and
380 stating the basis for the exemption. The register of deeds for the county of Dukes County, and
381 the assistant recorder for the registry district of the county of Dukes County, shall not record or
382 register, or receive or accept for recording or registration, any deed, except a mortgage deed,
383 relative to a real property interest in real property situated in any town that is a member of the
384 commission to which has not been affixed such a certificate, executed by the commission or its
385 designee. Failure to comply with this requirement shall not affect the validity of any instrument.

386 The commission or its designee shall deposit all fees received hereunder with the county
387 treasurer of the county of Dukes County as part of the fund established by section 13. The fee
388 imposed hereunder shall be due simultaneously with the time of transfer upon which it is
389 imposed.

390 SECTION 16. The commission is authorized to enter into one or more agreements with
391 the Martha’s Vineyard land bank commission established by Chapter 736 of the Acts of 1985, as
392 amended, through which the housing bank may delegate to the Martha’s Vineyard land bank
393 commission the record keeping requirements set forth in section 14, collection of fees,
394 processing of applications for exemptions and issuance of certificates and pursuant to section 15,
395 processing of applications for refunds pursuant to section 17, the imposition of interest or
396 penalties pursuant to section 19, sending of notices and conduct of hearings pursuant to section
397 20, providing for compensation or reimbursement of costs incurred by the Martha’s Vineyard
398 land bank commission from fees collected pursuant to this act and any other matter that may be
399 delegated pursuant to section 4A of chapter 40 of the General Laws. Notwithstanding section 4A
400 of chapter 40 or any general or special law to the contrary, such agreement or agreements may be
401 for a term in excess of 25 years.

402 SECTION 17. At any time within 7 days following the issuance of the certificate of
403 payment of the fee imposed by section 15, the purchaser or the purchaser’s legal representative
404 may return said certificate to the commission or its designee for cancellation, together with an
405 affidavit signed under oath or under the pains and penalties of perjury that the transfer, with
406 respect to which such certificate was issued, has not been consummated, and thereupon the fee
407 paid with respect to such transfer shall be forthwith returned to the purchaser or the purchaser’s
408 legal representative.

409 SECTION 18. The following transfers of real property interests shall be exempt from the
410 fee established by section 15. Except as otherwise provided, the purchaser shall have the burden
411 of proof that any transfer is exempt hereunder.

412 (a) transfers to the government of the United States, the commonwealth, and any of
413 their instrumentalities, agencies or subdivisions;

414 (b) transfers which, without additional consideration, confirm, correct, modify or
415 supplement a transfer previously made;

416 (c) transfers made as gifts with consideration of less than \$100; in any proceedings to
417 determine the amount of any fee due hereunder, it shall be presumed that any transfer for
418 consideration of less than fair market value of the real property interests transferred was made as
419 a gift without consideration to the extent of the difference between the fair market value of the
420 real property interests transferred and the amount of consideration claimed by the purchaser to
421 have been paid or transferred, if the purchaser shall have been at the time of transfer the spouse,
422 the lineal descendant, the lineal ancestor of the seller, by blood or adoption, and otherwise it
423 shall be presumed that consideration was paid in an amount equal to the fair market value of the
424 real property interests transferred, at the time of transfer;

425 (d) transfer to the trustees of a trust in exchange for a beneficial interest received by
426 the seller in such trust; distribution by the trustees of a trust to the beneficiaries of such trust;

427 (e) transfers by operation of law without actual consideration, including but not
428 limited to transfers occurring by virtue of the death or bankruptcy of the owner of a real property
429 interest;

430 (f) transfers made in partition of the land and improvements thereto, under the
431 provisions of chapter 241 of the General Laws;

432 (g) transfers to any charitable organization as defined in clause third of section 5 of
433 chapter 59 of the General Laws, or any religious organization, provided that the real property
434 interests so transferred shall be held by the charitable or religious organization solely for its
435 public, charitable or religious purposes;

436 (h) transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee,
437 and transfers of the property subject to a mortgage to the mortgagee in consideration of the
438 forbearance of the mortgagee from foreclosing said mortgage;

439 (i) transfers made to a corporation, limited liability company or partnership at the
440 time of its formation, pursuant to which transfer no gain or loss is recognized under the
441 provisions of section 351 of the Internal Revenue Code;

442 (j) transfers made to a stockholder of a corporation in liquidation of the corporation,
443 transfers to a member in liquidation of a limited liability company, and transfers made to a
444 partner of a partnership in liquidation of the partnership;

445 (k) transfers consisting of the division of marital assets under the provisions of
446 section 34 of chapter 208 of the General Laws or other provisions of law;

447 (l) transfers of property consisting in part of real property interests situated within a
448 town that is a member of the commission and in part of other property interests, to the extent that
449 the property transferred consists of property other than real property situated within a town that
450 is a member of the commission provided that the purchaser shall furnish the commission with
451 such information as it shall require or request in support of the claim of exemption and manner
452 of allocation of the consideration for such transfers;

453 (m) the first \$1,000,000 of the purchase price of all transfers of real property interests,
454 or a higher exemption as determined annually by the commission;

455 (n) transfer of a real property interest that is subject to and used consistent with an
456 affordable housing restriction as defined in section 31 of chapter 184 of the General Laws;
457 provided, however, that the affordable housing restriction has a term remaining at the time of the
458 transfer of not less than 5 years; and provided further, that the purchaser shall make the real
459 property with respect to which the real property interest is held and that is the subject of the
460 transfer, the purchaser’s actual domicile within 2 years of the time of transfer and shall remain
461 permanently or for an indefinite time and without any certain purpose to return to a former place
462 of abode for a period lasting not less than the fifth anniversary of the transfer. Notwithstanding
463 this paragraph, if the real property interest is transferred again within 5 years and the later
464 transfer complies with this paragraph, the fee, interest and penalty shall not be due. The fee
465 exempted hereunder shall become due, together with the accumulated interest and penalties
466 calculated from the date of the transfer exempted hereunder, if: (i) the commission or its
467 designee determines that a purchaser has not made the real property with respect to which the
468 real property interest is held and that is the subject of the transfer the purchaser’s actual domicile
469 within 2 years of the time of transfer; (ii) the holder of an affordable housing restriction
470 determines within 5 years of the transfer that the real property interest to which it pertains is not
471 being used consistent with the requirements of the affordable housing restriction; or (iii) a later
472 transfer within 5 years does not comply with this paragraph. The purchaser shall certify as to the
473 foregoing and the commission shall attach to the deed a certificate that shall recite the fact that
474 there is running with the land a lien equal to the amount of the fee exempted plus accumulated
475 interest and penalties until such time as all conditions of this paragraph have been met.

476 (o) transfer of a real property interest which is limited to any of the following: the
477 dominant estate in any easement or right of way; the right to enforce any restriction; any estate at

478 will or at sufferance; any estate for years having a term of less than thirty years; any reversionary
479 right, condition, or right of entry for condition broken; and the interest of a mortgagee or other
480 secured party in any mortgage or security agreement.

481 SECTION 19. A purchaser who fails to pay all or any portion of the fee established by
482 section 15 on or before the time when the same is due shall be liable for the following additional
483 payments in addition to said fee:

484 (a) Interest. The purchaser shall pay interest on the unpaid amount of the fee to be
485 calculated from the time of transfer at a rate equal to 14 per cent per annum.

486 (b) Penalties. Any person who, without fraud or willful intent to defeat or evade a fee
487 imposed by this act, fails to pay all or a portion of the fee within 30 days after the time of
488 transfer, shall pay a penalty equal to 5 per cent of the outstanding fee as determined by the
489 commission for each month or portion thereof that the fee is not paid in full; provided, however,
490 that in no event shall the amount of any penalty imposed hereunder exceed 25 per cent of the
491 unpaid fee due at the time of transfer. Whenever the commission or its designee determines that
492 all or a portion of a fee due under section 15 was unpaid due to fraud with intent to defeat or
493 evade the fee imposed by this chapter, a penalty equal to the amount of said fee as determined by
494 the commission or its designee shall be paid by the purchaser in addition to said fee.

495 SECTION 20. (a) The commission or its designee shall notify a purchaser by
496 registered or certified mail of any failure to discharge in full the amount of the fee due under this
497 act and any penalty or interest assessed pursuant to sections 18 or 19. The commission or its
498 designee shall grant a hearing on the matter of the imposition of said fee, interest or penalty if a
499 petition requesting such hearing is received by the commission within 30 days after the mailing
500 of said notice. The commission or its designee shall notify the purchaser in writing by registered

501 or certified mail of its determination concerning the deficiency, penalty or interest within 15 days
502 after said hearing. Any party aggrieved by a determination of the commission or its designee
503 concerning a deficiency, penalty or interest may, after payment of said deficiency, appeal to the
504 district or superior court within 3 months after the mailing of notification of the commission or
505 its designee. Upon the failure to timely petition for a hearing, or appeal to said courts, within the
506 time limits hereby established, the purchaser shall be bound by the terms of the notification,
507 assessment or determination, as the case may be, and shall be barred from contesting the fee, and
508 any interest and penalty, as determined by the commission or its designee. All decisions of said
509 courts shall be appealable. Every notice to be given under this section by the commission or its
510 designee shall be effective if mailed by certified or registered mail to the purchaser at the address
511 stated in a recorded or registered instrument by virtue of which the purchaser holds any real
512 property interest, the transfer of which gives rise to the fee which is the subject of such notice;
513 and if no such address is stated or if such transfer is not evidenced by an instrument recorded or
514 registered in the public records in the county of Dukes County, such notice shall be effective
515 when so mailed to the purchaser in care of any person appearing of record to have a fee interest
516 in the real property in which the real property interest is held, at the address of such person as set
517 forth in an instrument recorded or registered in the county of Dukes County.

518 (b) All fees, penalties and interest required to be paid pursuant to this act shall constitute
519 a personal debt of the purchaser and may be recovered in an action of contract or in any other
520 appropriate action, suit or proceeding brought by the commission; said action, suit or proceeding
521 shall be subject to chapter 260 of the General Laws.

522 (c) If any purchaser liable to pay the fee established by this act neglects or refuses to pay
523 the same, the amount, including any interest and penalty thereon, shall be a lien in favor of the

524 commission upon all property and rights to property, whether real or personal, belonging to such
525 purchaser. Said lien shall arise at the time of transfer and shall continue until the liability for such
526 amount is satisfied. Said lien shall in any event terminate not later than 6 years following the
527 time of transfer. Said lien shall not be valid as against any mortgagee, pledgee, purchaser or
528 judgment creditor unless notice thereof has been filed by the commission (i) with respect to real
529 property or fixtures, in the registry of deeds for the county of Dukes County, or (ii) with respect
530 to personal property, in the office in which a security of financing statement or notice with
531 respect to the property would be filed in order to perfect a nonpossessory security interest
532 belonging to the person named in the relevant notice, subject to the same limitations as set forth
533 in section 50 of chapter 62C of the General Laws.

534 In any case where there has been a refusal or neglect to pay any fee, interest or penalties
535 imposed by this act, whether or not levy has been made, the commission, in addition to other
536 modes of relief, may direct a civil action to be filed in a district or superior court of the
537 commonwealth to enforce the lien of the commission under this section with respect to such
538 liability or to subject any property of whatever nature of the delinquent, or in which he has any
539 right, title or interest, to the payment of such liability.

540 The commission may issue a waiver or release of any lien imposed by this section with
541 the approval of the town advisory board of the town or towns in which the property subject to the
542 lien is located. Such waiver or release shall be conclusive evidence that the lien upon the
543 property covered by the waiver or release is extinguished.

544 SECTION 21. This act, being necessary for the welfare of the member towns and the
545 county of Dukes County and their inhabitants, shall be liberally construed to effect the purposes
546 hereof.

547 SECTION 22. Any town on Martha’s Vineyard that is not a member of the housing bank
548 may become a member by the affirmative vote of a majority of the voters at any regular or
549 special town election at which the question of acceptance has been placed on the ballot. All
550 rights, privileges and obligations applicable to the original members of the housing bank shall be
551 applicable to new members, but a new member town shall not be responsible for funding
552 obligations or debt incurred before it became a member. The initial town-representative
553 commission member of a new member town shall be appointed, and thereafter the town-
554 representative members for such town shall thereafter be elected, as provided in section 3;
555 provided that the initial term of the initial elected town representative member shall be for such
556 period as may be determined by the commission in order to preserve staggered terms as required
557 by section 3.

558 SECTION 23. Any member town may withdraw from the housing bank by the
559 affirmative vote of a majority of the voters at any regular or special town election. The fee
560 established by section 15 shall continue to be collected in any town that votes to withdraw, but
561 only until satisfaction of such town’s pro rata share of all housing bank debt incurred and all
562 funding commitments approved by the town’s town advisory board prior to the date that such
563 town provides notice to the commission that the town has voted at a regular or special election to
564 withdraw from the housing bank. A town’s pro rata share of housing bank debt shall be
565 determined as the ratio of all fees collected on behalf of such town under section 15 during its
566 membership in the housing bank to all fees collected under section 15 on behalf of all member
567 towns during the same period. Upon receipt of notice that a member town has voted at a regular
568 or special election to withdraw from the housing bank, the commission or its designee shall
569 reserve all transfer fees received on behalf of such withdrawing town, in excess of the amounts

570 necessary to pay current debt service on such town's pro rata share of housing bank debt and to
571 pay funding commitments approved by such town's town advisory board prior to receipt of such,
572 which amounts shall be applied solely to the payment of such funding commitments, and to
573 housing bank debt allocable to the withdrawing town at its earliest optional redemption date or
574 dates, as the case may be.

575 In the event of a town's withdrawal, the commission may expend funds for activities and
576 projects located within the withdrawing town only to the extent that such expenditures were
577 approved prior to the date that such town provides notice to the commission that the town has
578 voted at a regular or special election to withdraw from the housing bank, and provided that
579 transfer fees continue to be collected in that town.

580 SECTION 24. This act shall expire 30 years from its date of passage unless specifically
581 extended by vote of the commission and an affirmative vote of a majority of the voters at town
582 meetings of at least 4 member towns; provided that, if extended, this act shall remain in effect
583 only for those towns that vote in the affirmative to extend. The fee established by section 15 shall
584 continue to be collected in any town that does not vote to extend this act until satisfaction of both
585 all funding commitments approved by the withdrawing town's town advisory board and debt
586 incurred by the housing bank prior to (1) the effective date of the extension of the this act if this
587 act is extended notwithstanding the town's vote, and (2) the expiration of this act, if this act is
588 allowed to expire.

589 If the member towns of the housing bank are reduced to fewer than 4, the housing bank
590 shall be dissolved. Upon dissolution of the housing bank, the fee established by section 15 shall
591 continue to be imposed until all funding commitments and debt, including but not limited to
592 repayment of bonds and notes of the housing bank, have been paid in full, and the commission

593 shall continue in existence during such time for the sole purpose of collecting and administering
594 such fees. Title to all funds, personal property and real property interests shall vest in the
595 member towns or their designees as herein provided after provision is made for payment of all
596 bonds, notes and other obligations of the housing bank. Personal property and real property
597 interests held by the housing bank at the time of dissolution shall be transferred to the town or
598 towns in which property is situated, or the designee of such town or towns, who shall maintain,
599 protect, limit the future use of, improve, or otherwise preserve such property for year-round
600 housing and community housing purposes as defined in section 1. Funds held by the housing
601 bank shall be transferred to the towns on Martha’s Vineyard in proportion to the fees collected
602 on behalf of each town over the life of the housing bank under this act, to be held in trust for the
603 purpose of holding and managing the real property interests transferred to the towns pursuant to
604 this paragraph.

605 SECTION 25. Notwithstanding anything herein or any general or special law to the
606 contrary, sections 15, 17, 18, 19 and 20 of this chapter shall become effective upon the adoption
607 of any general law authorizing the imposition of a transfer fee to support affordable housing.
608 Acceptance of this act in the manner set forth in section 26 shall be construed as acceptance of
609 any such general law that may be adopted after the effective date of this act and adoption of a
610 transfer fee and exemptions as set forth in this act. In the event of any conflict between such
611 general law and the provisions of this act, the terms of this act shall prevail.

612 SECTION ~~25~~26. Acceptance of this act shall be by the affirmative vote of a majority of
613 the voters at any regular or special town election at which the question of acceptance has been
614 placed on the ballot. This act shall become effective on the date on which acceptance by four
615 towns located on Martha’s Vineyard has been effected.

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