
April 18, 2013

**Via Electronic and Overnight Delivery**

The Honorable Gayle McLaughlin
The Honorable Nathaniel Bates
The Honorable Jovanka Beckles
The Honorable Courtland "Corky" Boozé
The Honorable Tom Butt
The Honorable Jael Myrick
The Honorable Jim Rogers
City of Richmond
City Council Chambers
440 Civic Center Plaza
Richmond, CA 94804

**RE: Use of Eminent Domain to Acquire Underwater Mortgages**

Dear Mayor McLaughlin, Vice Mayor Boozé and Councilmembers Bates, Beckles, Butt, Myrick, and Rogers:

The twenty-two organizations listed below recently learned that the City of Richmond has entered into an Advisory Services Agreement with Mortgage Resolution Partners (MRP) and that this agreement envisions using the City's eminent domain power to acquire certain underwater mortgage loans held by private-label mortgage-backed securities.

We are writing to make you aware of our serious concerns with this proposal. We understand that the timing is not ideal, and we apologize for not bringing these concerns to your attention earlier. We, however, understand that the Agreement does not obligate the City to use eminent

domain. We are therefore hopeful that you will weigh our concerns before making any final decisions.

We believe that the MRP proposal raises very serious legal and constitutional issues. No jurisdiction has ever used eminent domain to acquire underwater mortgages in securitized pools. Such a novel use of the eminent domain powers is unprecedented and would, in our view, not survive the multiple legal challenges that would ensue.

Under the 5th Amendment of the U.S. Constitution and California law, eminent domain powers can only be exercised when the proposed taking is for a public use or benefit and when just compensation has been provided to the former owner of the property. The MRP proposal does not satisfy either requirement. The proposal begins by targeting the 7% of Richmond loans that are in private-label mortgage backed securities and then narrows this group further to focus on those who are current on their existing mortgages, have good credit, and ideally don't have existing home equity loans or other liens on the property. While the small group of people that satisfy these criteria would initially appear to be helped, this help comes at the substantial expense of the entire Richmond community and other potential mortgage borrowers across the country.

In addition, the proposal on its face substantially undervalues the existing owners' holdings. In our view, fair compensation has not been provided when the amount paid is well below the face value of the taken note and when it does not reflect the diminution in the value of the overall investment. In MRP's own example, the mortgage that they pay investors $160,000 for is refinanced shortly thereafter for $190,000 with much of the additional $30,000 going to MRP and its funders. The plan does not provide just compensation.

Furthermore, the mortgage note is typically held by the PLS trustee who is often domiciled outside the State of California. A City's eminent domain authority does not extend beyond the City's borders; it certainly doesn't apply outside the state. We therefore believe that entities that seek to use eminent domain in this highly unusual way will face years of costly litigation brought by multiple litigants who, because of fiduciary and other obligations, are forced to sue to protect the assets of their investors. For these and other reasons, Richmond may be tied up in costly litigation for years.

In addition to the legal issues, the use of eminent domain will also be immensely destructive to U.S. mortgage markets in general and to specific communities using eminent domain, in particular. If the sanctity of the contractual relationship between a borrower and a creditor is undermined by eminent domain, both lenders and investors will be reluctant to provide future funding. The result will be a significant contraction of credit availability, particularly in eminent domain communities. It will be much harder to get a loan, and any loan that is granted will likely come with much stronger credit scores, higher interest rates and larger down payments. This in turn could actually serve to further depress housing values in the City.

We also want to make you aware of who invests in private label mortgage-backed securities and who is therefore harmed if these mortgages are taken by eminent domain. More than a third of the approximately $1.3 trillion currently held in PLS is held in pension plans, annuities and other insurance products, and mutual funds. Thus, the PLS losses are suffered not by large institutions but by every day savers and investors who have these investments in their pension and 401k plans, their college savings plans and their individual investment portfolios. Fannie Mae, Freddie Mac and the Federal Home Loan Board also own hundreds of billions of dollars of PLS. The Federal

Housing Financing Agency (FHFA), which is the conservator of Fannie Mae and Freddie Mac and the regulator of Federal Home Loan Banks, has expressly stated that "action may be necessary on its part to avoid a risk to safe and sound operations at its regulated entities and to avoid taxpayer expense."

We recognize the City's intention to assist homeowners who are facing financial difficulties. We, however, believe that using the power of eminent domain to abrogate a contractual agreement between borrower and creditor would have far greater and lasting negative effects on existing and future Richmond homeowners and on small Main Street investors from Richmond and elsewhere who have these investments in their pension plans and other savings vehicles.

We thank you for your time and consideration. Please do not hesitate to contact any of our organizations for more information or further discussion.

Sincerely,

Securities Industry and Financial Markets Association
American Bankers Association
American Council of Life Insurers
American Land Title Association
American Securitization Forum
Association of California Life and Health Insurance Companies
Association of Financial Guaranty Insurers
Association of Mortgage Investors
California Association of Realtors
California Bankers Association
California Escrow Association
California Land Title Association
California Mortgage Association
California Mortgage Bankers Association
Consumer Mortgage Coalition
Investment Company Institute
Mortgage Bankers Association
National Association of Home Builders
Richmond Chamber of Commerce
The Financial Services Roundtable
The Housing Policy Council of The Financial Services Roundtable
West Contra Costa Association of Realtors

Cc: Bill Lindsay, City Manager
Bruce Goodmiller, City Attorney
Patrick Lynch, Housing & Community Development Director
Carlos Privat, Assistant City Attorney