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San Bernardino County abandons eminent domain mortgage plan

January 24, 2013 | By Alejandro Lazo

San Bernardino County and two of its cities abandoned a plan that would use eminent domain to seize troubled mortgages and write down debt for homeowners.

A Joint Powers Authority that the county and the cities formed last year to study the idea voted unanimously on Thursday to shelve the proposal. Greg Devereaux, county chief executive and chairman of the authority, said the group decided to give up on the idea due to a lack of public support.

"We are taking that off the table," Devereaux said Thursday.

The board did vote to begin searching for other plans from outside contractors that would help underwater homeowners in the county and the two cities, Ontario and Fontana. The authority was created to consider the eminent domain plan proposed by the San Francisco investment firm Mortgage Resolution Partners.

The decision by the authority comes as a blow to the idea, given that it first caught national attention in hard-hit San Bernardino. Eminent domain is usually used to seize land — not loans — to serve the public good, as when local governments seize blighted properties.

The plan pushed by Mortgage Resolution Partners and considered by the Inland Empire communities as well as other municipalities would have been the first widespread attempt at using eminent domain to take over residential mortgages. The plan had called for local governments to seize control of underwater mortgages from investors and pay those investors less than face value. Then the governments would have created new loans for the homeowners based on current value.

Steven Gluckstern, chairman of Mortgage Resolution Partners, said in an interview that he was disappointed by the board's decision. But he added that his group was in discussions with more than 30 other jurisdictions across the country and he was confident that one of them would probably enact the plan during the first three months of this year.

It is a bump in the road, but this is a marathon and we have had lots of conversations," Gluckstern said. "You'd like your first guy to have gotten there, but maybe he drops out of the race."

Ever since the idea was floated in San Bernardino last year, advocates of the mortgage and investment industries have called the plan an overreach that would nullify valid contracts and hurt the local housing market. The result would be protracted litigation, a surge in mortgage rates and a tightened market for borrowers with less-than-perfect credit, critics have said.

One of the groups opposed to the plan is the powerful Securities Industry and Financial Markets Assn., or SIFMA.

"We are encouraged to hear that the county has decided it will not pursue use of eminent domain to restructure mortgages," Timothy Cameron, managing director and head of SIFMA's Asset Management Group, said in a statement Thursday. "As SIFMA has said, the unprecedented, potential use of eminent domain would cause severe damage to struggling housing markets and is likely unconstitutional on its face. We are pleased that the county has recognized these risks and decided to move in other directions."

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Will Richmond take eminent domain too far?

July 30, 2013 | By Alexandra Le Tellier

Richmond is taking action on its housing crisis, but is the California city going too far in its mission to save homeowners from underwater mortgages?

On Tuesday, Richmond sent notices to holders of underwater mortgages asking them to sell their loans to the city or risk having the city use eminent domain to seize residential mortgages. While other cities have considered adopting a plan that would allow them to invoke eminent domain, Richmond appears to be the first city to do so.

It's a controversial move in part because "eminent domain is usually used to seize land -- not loans -- to serve the public good, as when local governments seize blighted properties," explains Times reporter Alejandro Lazo. To some, as Times reader "cranios" says on our comments board, it's unfair to "bully the mortgage holders to sell out at a loss."

But in our Op-Ed pages last month, Robert Kuttner, co-editor of the American Prospect, took an optimistic view of the strategy, writing:

Eminent domain more typically is used to destroy neighborhoods for new development. In this case, it could instead save neighborhoods. If eminent domain became a general strategy, it could spare an estimated 3 million to 4 million families the loss of their homes.

But is this too rosy a view?

When San Bernardino considered instituting eminent domain last year, The Times' editorial board warned the city to proceed with caution.

Although governments have used it in the past to seize all kinds of property in the name of the public good, eminent domain remains a drastic step that, when asserted in a novel way, can send shock waves through a market. [...]

Seizing underwater loans from those complex securities would let local governments do what investors haven't been able to do for themselves, which is minimize the foreclosures that are reducing the value of their securities.

The trade groups that represent investors and lenders aren't buying that argument. They contend that seizing securitized mortgages would spook investors, drying up the supply of money for new mortgages.

Their warnings may very well be exaggerated, but it would be pointless to implement the Mortgage Resolution Partners plan if every use of eminent domain drew a lawsuit. That means county officials will have to mollify the objectors before moving forward. They also have to make the case that reducing the risk of foreclosures justifies seizing loans regardless of whether the borrowers are capable of paying them off -- an approach that raises tough questions about fairness. Finally, they need to show that it's appropriate to use eminent domain to generate profits for one group of investors (and local governments) at the apparent expense of another group of investors.

Richmond Mayor Gayle McLaughlin is understandably concerned that her community's future is at stake. But before proceeding, shouldn't she be sure that this plan can actually help turn around the city?

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Richmond adopts eminent domain mortgage plan

July 30, 2013 | By Alejandro Lazo

Richmond is adopting a plan to take over underwater mortgages that would invoke the city's eminent domain powers if necessary.

The city will be the first in the nation to formally adopt the novel but controversial plan that was rejected by San Bernardino County and two of its cities earlier this year.

The city said it will buy home mortgages from financial institutions, write down those loans and refinance homeowners in the properties into new loans. If financial institutions do not cooperate, the city will seize the loans using eminent domain, Richmond Mayor Gayle McLaughlin said.

PHOTOS: SoCal's most affordable ZIP Codes for home buyers

"This is a tool to get the job done," McLaughlin said. "The housing crisis is still ongoing."

The city on Tuesday sent notice to the holders of more than 620 underwater mortgages for homes in the city, asking these servicers and trustees to sell the city these loans. The city sent letters to 32 entities. The city plans further such actions in the future, officials said in a conference call with reporters Tuesday.

Eminent domain is usually used to seize land — not loans — to serve the public good, as when local governments seize blighted properties. The Richmond plan would be the first widespread attempt at using eminent domain to seize residential mortgages.

The city will team up with the San Francisco firm Mortgage Resolution Partners, which last year pitched the plan to San Bernardino and two of its cities, Fontana and Ontario. That county and the two cities formed a Joint Powers Authority to consider the eminent domain idea but then shelved it after Wall Street groups voiced sizable opposition and little public support was heard. The county and the two cities were the first communities to consider the plan.

The Securities Industry and Financial Markets Association of New York has been a hefty opponent of the eminent domain plan, with its managing director appearing before a number of municipal meetings to speak against it. On Tuesday, the group reaffirmed its disapproval in a brief email to The Times.

McLaughlin, the Richmond mayor, said on Tuesday that city officials had spoken to members of the group but remained resolute to move forward despite their opposition.

"We are just not going to back down; we really feel it is the responsibility of the servicers and the banks to fix this, and they haven't, so we are taking this into our own hands," she said. "It is our community that is at stake here."

Mortgage Resolution Partners will provide the funding for Richmond to purchase the loans and also finance any litigation.

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Investor Group Calls Richmond, Calif., Eminent Domain Plan Unconstitutional

Suit Against City Would Block Its Plans to Seize and Buy Mortgages

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By NICK TIMIRAOS CONNECT

Updated Aug. 7, 2013 11:24 p.m. ET

Banks representing some of the nation's largest bond investors filed suit against the city of Richmond, Calif., on Wednesday to block plans by city officials to seize and buy mortgages using their powers of eminent domain.

The lawsuit, filed in federal court in San Francisco, could serve as a key test for whether a city can move forward with such a strategy, which would allow it to forcibly buy mortgages from investors at a price potentially below the property's current market value. The city would then reduce the loan balance and refinance the mortgage, resulting in a lower mortgage payment for the borrower. The aim is to help struggling homeowners avoid foreclosure.

The legal challenge could serve as a key test for whether cities from Newark, N.J., to Seattle are able to follow Richmond's lead.

The lawsuit was filed by three mortgage-bond trustees, units of Wells Fargo & Co. and Deutsche Bank (DBKX +1.33%), that were directed to act by a group of investors, including BlackRock Inc., (BLK +1.17%) Pacific Investment Management Co., as well as Fannie Mae (FNMA +1.88%) and Freddie Mac (FMCC 0.00%), the government-supported mortgage companies.

City leaders in Richmond, a working-class suburb of around 100,000 on the San Francisco Bay, began sending letters last week to mortgage companies seeking to purchase loans on 624 properties and threatening to force sales via eminent domain if investors resisted. The city is teaming up with Mortgage Resolution Partners, a private investment firm based in San Francisco, which was also named a defendant in the lawsuit.

Law Blog
Is Eminent Domain Plan a Good Idea?

At least four other California cities have signed agreements to work with Mortgage Resolution Partners, but none have taken

the step of contacting bondholders about loan sales.

The lawsuit alleges that the proposed use of eminent domain is unconstitutional because it benefits a small group of Richmond citizens at the expense of out-of-state investors, violating the law on interstate commerce. The lawsuit also argues that loans aren't being seized for a valid public purpose—a key criterion for a city that invokes eminent domain.

"Mortgage Resolution Partners has led the city of Richmond into an unprecedented use of eminent domain seizure that is unconstitutional, harmful to homeowners and

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taxpayers, and unfair to millions of individual savers and investors," said John Ertman, a partner at Ropes & Gray in New York.

An MRP representative said it was confident its proposal is "entirely within the law." "No investor in any trust will be made worse off by the sale of any loan," said a company spokesman.

Richmond officials said Wednesday they didn't have an immediate response to the lawsuit.

Eminent domain allows a government to acquire property by force that is then reused in a way considered good for the public—new housing or roads. Property owners are entitled to compensation, often determined by a court. Instead of acquiring houses, Richmond would buy the mortgages.

Legal advocates of the eminent-domain plan have said that constitutional challenges aren't likely to hold up in court. The loan strategy wouldn't burden interstate commerce "because it doesn't prevent credit from flowing in any particular way," said Robert Hockett, a Cornell University law professor who advocates for using eminent domain to seize underwater mortgages.

"This is a bluff," said Mr. Hockett. "It's meant to scare city officials into saying, 'Oh, who are we to argue with the big guns.'"

Supporters say their plan would help not only specific homeowners but also the broader community by reducing foreclosures that are hurting property values and eroding the tax base. "It's the responsibility of banks to fix this, and they haven't, so we're taking it into our hands," Richmond Mayor Gayle McLaughlin said in a call with reporters last week.

Of the loans that Richmond wants to buy, more than two-thirds, or 444, are current on their payments. Investors say that seizing loans that are current on their payments from mortgage-bond trusts would significantly degrade the value of those investments. They say if the plan moves ahead lenders will require significant down payments or higher rates in communities where the threat of loan-seizures exists—much the way a sovereign-debt default can raise borrowing costs for a country.

Ms. McLaughlin said threats by banks to raise the costs or change the terms of mortgages to borrowers in her city would amount to "redlining"—a term used for an allegation that banks have at times refused to lend money to certain communities where minorities live.

"It's not redlining," said Scott Simon, who retired in May as a managing director at Pimco. "If you were a lender, would you lend in an area that could literally say, 'Oh, I know you lent someone \$100, but we are going to say you only get \$50?'"

Investors also say they're worried that the seizures only make economic sense for a city if local officials are able to buy loans at big discounts. "You cannot invest where your money is going to be expropriated—that's a key tenet of investing," said Jonathan Lieberman, head of residential mortgage investing at Angelo Gordon & Co., an investment adviser. The firm is considering whether to join the lawsuit.

The Richmond plan would work like this: for a home with an existing \$300,000 mortgage that now has a market value of \$150,000, Richmond might argue the loan is worth only \$120,000. If a judge agreed, the city's private financiers would fund the seizure of the loan, paying the current loan investors that reduced amount.

Then, they could offer to help the homeowner refinance into a new \$145,000, 30-year mortgage backed by a government agency. That would leave \$25,000 in profit, minus the origination costs, to be divided between the city, Mortgage Resolution Partners and its investors.

The proposal was set back earlier this year when officials in San Bernardino, Calif., voted against taking up the proposal after several months of hearings. But labor unions and community activists have helped galvanize support in a handful of new cities.

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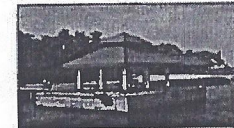
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U.S. warns against eminent-domain mortgage seizures

Federal Housing Finance Agency threatens to curtail lending in cities, including Richmond, Calif., that resort to eminent domain.

August 08, 2013 | By Alejandro Lazo

The nation's top housing finance regulator threatened to choke off mortgage lending in cities that use eminent domain to seize underwater loans from lenders.

The salvo from the Federal Housing Finance Agency came Thursday, on the heels of a lawsuit directed by major Wall Street firms and U.S.-sponsored mortgage giants Fannie Mae and Freddie Mac against the Bay Area city of Richmond.

Richmond is the first to push forward with the plan, also being debated in cities across the state and nation. Richmond wants to require lenders and investors to sell underwater mortgages at a deep discount. The city would then refinance borrowers into more-affordable mortgages.

The federal housing agency, which regulates Fannie and Freddie, on Thursday made clear it doesn't intend to let this happen. The agency said it would instruct Fannie and Freddie to "limit, restrict or cease business activities" in any jurisdiction using eminent domain to seize mortgages.

The move would be a "huge blow" to the city of Richmond, said Guy Cecala, publisher of Inside Mortgage Finance.

"It is pretty much a death sentence these days in terms of mortgage financing," Cecala said. "It is sort of an atom bomb solution, and the real question is would they pull the trigger on it, or is it just a threat? But it is the kind of thing they could do fairly quickly."

Executives and legal counsel for Fannie Mae and Freddie Mac also singled out the eminent domain plan this week during conference calls with journalists to discuss second-quarter financial results.

The use of eminent domain is "a serious issue that has the potential to unsettle investors in mortgage securities," Fannie Mae Chief Executive Timothy J. Mayopoulos said Thursday.

On Wednesday, the two mortgage giants joined with big bondholders in suing Richmond, seeking an injunction against the city and its private partner, Mortgage Resolution Partners. The city's program could cause investors losses of \$200 million or more if the plan goes forward, the lawsuit said.

The other bondholders directing that suit include Newport Beach-based Pacific Investment Management Co., BlackRock Inc. of New York and DoubleLine Capital of Los Angeles. In a separate action filed in the same San Francisco court Wednesday, the Bank of New York Mellon also sued the city and Mortgage Resolution Partners.

Eminent domain is typically used to seize land, not loans, usually to take over blighted property or land needed for projects such as a highway. But the unorthodox plan by Mortgage Resolution Partners would use the power to force private investors to sell mortgages.

Mortgage Resolution Partners first marketed the plan last year to San Bernardino County and two of its cities, Fontana and Ontario. The firm is now contracting with the city of Richmond to implement the strategy.

Other cities considering the proposal include El Monte, which weighed the idea behind closed doors during a City Council meeting Tuesday. At least three other California municipalities — La Puente in Los Angeles County, and Orange Cove and San Joaquin in Fresno County — are also consulting with Mortgage Resolution Partners. Half a dozen other California cities have had less formal discussions with the firm.

North Las Vegas, Nev., has also approved a similar plan, and Seattle and Newark are also considering adopting the measure, according to Mortgage Resolution Partners.

That makes the working-class city of Richmond, situated just north of Berkeley in the East Bay, an important test case. The hardscrabble town of 106,000 people has sizable black and Latino populations and was hard hit by the housing crisis, with homeownership rates well below the national average.

Even with prices rebounding in Richmond, many residents still struggle with outsized mortgage payments, said Richmond Mayor Gayle McLoughlin.

"The fact these threats are being put out there are very, very disturbing — but we are not afraid to go to court," McLoughlin said. "We are looking forward to it, because we think fully that our legal reasoning will win."

Cornell Law professor Robert C. Hockett, who advised Mortgage Resolution Partners on the proposal, said that the federal housing finance agency was acting outside of its authority by issuing its threats.

"How many times must it be repeated that principal write-downs on deeply underwater mortgage loans increase the value of the loans — even while keeping homeowners in their homes and communities intact?" Hockett said. "This is not only illegal, it is disgusting."

In their suit, the mortgage holders acting on behalf of Fannie, Freddie and Wall Street firms argue that the eminent domain plan violates the law on a number of grounds. The suit argues that the plan targets mortgages for a purely private use, which is a violation of the takings clause of the U.S. Constitution, the California Constitution and of eminent domain law.

By reaching beyond the city's borders to take control of loans, the city also may be violating due process requirements. And, the suit argues, by rewriting mortgage contracts, the program violates the interstate commerce clause of the U.S. Constitution, likely resulting in major harm to the national mortgage and housing industries.

Also, by eradicating the debts of some local residents at the expense of out-of-state creditors, the plan would also violate the contract clause of the U.S. Constitution, the suit alleges.

"Under this scheme, 100% of the cost will be borne by pensioners, savers and in some cases, the taxpayers who currently own these mortgage backed securities," said John Ertman, a lawyer at Ropes & Gray in New York who is acting as counsel to the firms behind the suit. "A hundred percent of the profit will be split between [Mortgage Resolution Partners] and the city of Richmond."

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Jim Puzzanghera in Washington contributed to this report.

latimes.com/business/money/la-fi-mo-eminent-domain-20130912,0,5887953.story

latimes.com

Judge rejects challenge to Richmond's threat to seize mortgages

By E. Scott Reckard

4:08 PM PDT, September 12, 2013

A federal judge in San Francisco said Thursday that he would toss out a lawsuit challenging advertisement a plan by Richmond, Calif., to seize underwater mortgages and write down their balances, agreeing with the city that the lawsuit is premature.

U.S. District Judge Charles Breyer said he planned to grant a dismissal motion filed by Richmond. The city had argued that it could use its eminent domain powers to buy the loans at a discount only after taking several more steps, including a special vote by the City Council -- actions that have not taken place.

The ruling follows the council's decision early Wednesday to continue exploring the program despite heavy pressure from the banking, mortgage and securities industries, including threats to cut off major sources of home loans to the largely blue-collar city near Berkeley.

PHOTOS: Cities where wages have fallen farthest

"It's Richmond two and Wall Street zero this week," said Amy Schur, campaign director for advocacy groups backing the principal-reduction plan.

"Judge Charles Breyer confirmed what people in Richmond have been saying all along," Schur said. "It's a no-brainer that Wells Fargo's case against the city of Richmond does not have standing."

Wells Fargo Bank and Deutsche Bank, acting as trustees for mortgage bonds sold during the housing boom, had sued on behalf of the giant bond-trading firms BlackRock Inc., Pacific Investment Management Co. and DoubleLine Capital.

The bond firms have invested money, mainly from institutional investors such as pension funds, in securities backed by some of the mortgages in question.

They contend that Richmond and its advisory firm, Mortgage Resolution Partners, are offering far less than market value for 624 targeted mortgages, most of which are not in arrears and some of which allegedly are not underwater.

The city denies the allegations, saying its valuation of the mortgages and home values was produced by highly respected real estate analysts.

The banks had asked Breyer to halt the program while the merits of the suit can be determined. But he said he would not consider doing so until the threat of seizure was "imminent."

The Securities Industry and Financial Markets Assn. noted that Breyer had said nothing about the

industry's claims that using eminent domain to seize mortgages is unconstitutional and "would represent a flagrant misuse of a municipality's power."

"We fully expect the litigation will succeed on merit once the issue is ripe," the trade group said.

Richmond Mayor Gayle McLaughlin said the city was pursuing its "step-by-step" process because "the banks and the federal government have not provided a fix."

"I was quite pleased that Judge Breyer made statements about the democratic process and how city governments have their processes to go through, including public hearings," McLaughlin said. "And that all takes time."

ALSO:

[Richmond presses on with mortgage principal-reduction plan](#)

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Bloomberg

BlackRock Bid to Stop Richmond Eminent Domain Dismissed

By Karen Gullo and Joel Rosenblatt - Sep 16, 2013

BlackRock Inc. (BLK)'s lawsuit with other bondholders to block Richmond, California, from seizing underwater home loans through eminent domain was dismissed by a federal judge in San Francisco.

U.S. District Judge Charles Breyer ruled today that the case had to be dismissed, rather than put on hold, because the claims depend on "future events that may never occur."

Breyer said on Sept. 13 that bondholders' request for an injunction blocking the city from continuing to pursue the plan was premature because city council members hadn't voted on whether to go to state court to seize the loans.

Bank trustees for bondholders including Pacific Investment Management Co. and DoubleLine Capital LP sued last month alleging Richmond's plan to seize more than 600 loans on which the amount owed is more than the value of the property through eminent domain and refinance them to give homeowners built-in equity was unconstitutional.

Richmond Mayor Gayle McLaughlin and lawyers for Mortgage Resolution Partners LLC, a firm that will provide financing, say the plan will prevent foreclosures and blight. Lawyers for the trustees allege that some of the targeted loans are still performing and the plan will harm investors and disrupt the U.S. housing market if it's allowed to proceed and other communities follow suit.

The cases are Wells Fargo Bank v. City of Richmond, 13-03663, and Bank of New York Mellon v. City of Richmond, 13-03664, U.S. District Court, Northern District of California (San Francisco).

To contact the reporters on this story: Joel Rosenblatt in San Francisco at joelrosenblatt@bloomberg.net; Karen Gullo in San Francisco at kgullo@bloomberg.net

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Is Richmond's mortgage seizure scheme even legal?

By Mike Konczal, Updated: September 21, 2013

The possibility of using eminent domain to reduce underwater mortgage debt in the city of Richmond California survived several tough challenges a week ago. As Lydia DePillis [reported](#), the City Council decided to go ahead with the process after a long hearing that could have possibly derailed it. Meanwhile an attempt by Wells Fargo and Deutsche Bank to have the action shut down even before it properly started was tossed out by a U.S. District Court (Judge: "Isn't this, as we say in the trade, a no-brainer?").

The arguments will now proceed to the two parts of eminent domain law: demonstrating public purpose for the takings and offering fair-value. Since this is the furthest an eminent domain case has made it, it might be useful to step back and walk through the arguments. If the case succeeds, it is likely other cities, which have been hesitant, will consider going forward.

What is going on in Richmond?

Richmond, California is one of the hardest hit cities in the housing collapse. The median sale price of housing fell from about \$450,000 in January 2006 to \$220,000 today. Roughly 51 percent of mortgages are underwater, and the average underwater homeowner owes 45 percent more than their home is worth. 16 percent of homeowners with a mortgage have suffered a foreclosure.

Richmond has proceeded by offering to purchase 624 mortgages held in private-label securities, offering a price as determined by an independent appraisal. The offer explained that they would attempt to negotiate first, but if they failed they would use their eminent domain powers.

However, in a technique argued since the beginning of the crisis by Cornell law professor Robert Hockett, rather than use eminent domain on the house itself, the city would seize the mortgage. A private investment company, Mortgage Resolution Partners (MRP), would in turn write down the mortgage amount to something closer to the current value. They would collect a profit and refinance the loan. The homeowner would be less likely to default with a lower loan amount, or would be able to sell without a short-sale, leaving him or her with more money to spend locally.

So wait, the city wants to use eminent domain on mortgages? I thought you could only use eminent domain on, like, actual property and things.

Interestingly enough, that is not the case. The issue here is whether or not a property that is "intangible" can be taken under eminent domain. And it can.

The very first time the Supreme Court heard a case on eminent domain, in fact, had to do with a state taking an intangible form of property. In the 1848 case *West River Bridge Company v. Dix*, the state of Vermont used its eminent domain powers to take a franchise contract. The Court argued that the distinction between "property which is corporeal" or tangible and property that is intangible, like the franchise under question, "has no foundation in reason." They were "aware of nothing peculiar to a franchise which can class it higher, or render it more sacred, than other property."

Since then, eminent domain cases have come up in everything from sports franchises to stocks, and every time the fact that the property in question wasn't a physical thing didn't matter for the case.

So what problems do the banks have with it?

Here's where it gets interesting. The banks are arguing that it is in fact against the Constitution to use eminent domain on these mortgages in question, as well as that it doesn't serve the public purpose and there is no fair-value offer that would make the plan workable.

Wait, so it is illegal to use eminent domain on mortgages?

The banks are arguing that there's something specific to the nature of securitized mortgages that have been financially engineered into bonds and eminent domain that goes beyond previous cases.

Their first, and main, argument, is that the mortgages don't actually exist in Richmond. And since Richmond can only use eminent domain for these within its territory, if the mortgages aren't there it is a problem. The banks argue that the mortgages, because of their slice-and-diced nature, exist legally somewhere other than Richmond. (Given the notorious document fraud in the financial industry when it comes to these mortgage bonds, it's likely the financial industry also doesn't know where the mortgages are, but that's another issue.)

The courts use a variety of tests to figure out where intangible property resides, and it can in turn reside in several different places for different legal purposes. Richmond argues that when considering where an intangible property resides, the mortgages are incurred by Richmond residents and secured by property in Richmond, and there's extensive case law that this is the important distinction that should be used for eminent domain purposes.

The banks are also arguing that this is a state trying to set interstate commerce for the nationwide housing market, and is thus illegal under a "dormant commerce clause." The banks also argue that it would violate the Contracts Clause of the Constitution, because the debts of local citizens would be forgiven at the expense of creditors.

However, the Supreme Court has consistently argued that eminent domain supersedes the Contracts Clause. And there's nothing in this process that would discriminate

against out-of-state creditors versus in-state. (Indeed, the creditors who would face writedowns could be in the same state.)

One never knows what courts will do, but in general the argument that this is illegal because of something to do with the mortgages themselves doesn't seem that strong. Hence the real fighting over public purpose and valuation.

So that leaves public purpose and costs. What is the public purpose of this program?

This is what will be argued next in Richmond. It is very likely Richmond will argue that preventing blight is a major, legitimate public purpose, and the courts agree. Abandoned homes result in increased crime and significant public costs, in addition to destabilizing neighborhoods. According to the Richmond city manager, William Lindsay, the city had to haul 295 tons of trash off of private property, most of it from vacant homes in 2010 alone. And that says nothing of the police and fire services that have had to dedicate resources away from regular crimes to deal with vacant homes.

The banks argue that the loans are performing (more on their argument about this in a minute), and as such don't serve a public purpose. But there's also a public purpose in solving problems in the coordination of mortgage servicers to writedown and deal with failing mortgages. There's also the public purpose of allowing people to move as well as refinance allowing for the movement of individuals as well as the ability to refinance. These are all legitimate purposes of eminent domain; indeed one such Supreme Court case from the 1980s found that "reduc[ing] the concentration of land ownership" is a legitimate public purpose for eminent domain.

What's this about coordination?

There's been a lot of development in the argument that the middlemen in mortgage servicing have both significant conflicts of interest as well as are underinvested to handle these issues. As Adam Levitin and Tara Twomey argue, servicers "do not have a meaningful stake in the loan's performance," and their business structure "encourage servicers to underinvest in default management capabilities, leaving them with limited ability to mitigate losses."

Their incentives don't match those of the investors they are supposed to work for. They are make more money dragging out mortgage issues, while padding their costs along the way. And they are "incentivized to favor modifications that reduce interest rates rather than reduce principal, even if that raises the likelihood of redefault."

One function of regulation is to coordinate the actions of many different parties into productive paths -- think of traffic laws. Coordinating creditors and investors is usually the function of the bankruptcy code, but bankruptcy isn't applicable for home mortgages. However eminent domain is often used for this purpose of coordinating and forcing a sale, and it can do the same here in breaking coordination problems among the many different, broken parts of the mortgage chain.

Ok, so the real fight is probably about valuation. Is this a highway robbery issue?

As a reminder of process, the courts will have to agree that any price paid is an actual fair-value price. "It is a legal requirement that fair value is paid," Robert Hockett told me. "The courts are going to do their duties, and hear arguments under an adversarial system. This isn't a new issue. Across a range of legal issues, including eminent domain, the courts have to figure out the legal value of something. Both sides will offer valuations, and bring experts to explain different methodologies under cross-examination. The court itself may impanel their own witness. And they'll ultimately decide what fair value is."

The banks argue that the only way to make this work is to pay far below what would have been given in a fair negotiation. Richmond, in turn, argues that their offers were generated by appraisers that the financial industry itself uses. Indeed, Richmond doesn't "make offers" -- it instead hires independent appraisers who come up with the valuations that were proposed.

Now the fight will continue to what methods those appraisers use, and that is likely where the court fight will settle. One way to evaluate these mortgages would be to compare them to bonds of mortgages containing similar instruments and see what discount is used. Given the still high levels of foreclosures, this would generate a significant discount. This is a common technique to evaluate risk and valuations when markets aren't available, say for understanding the credit risk of a brand new company, as they aren't in high foreclosure areas.

The banks also argue that the fact that a majority of homeowners are current on their loans means that they aren't relevant to either public purpose or subject to a steep discount. But, in a high-risk zone with unemployment still high, current mortgages can easily fall apart. There's also an argument that if you only picked mortgages that were failing, you'd encourage a kind of moral hazard that could amplify the very problem the city is trying to stop. Regardless, the valuation in eminent domain is a matter for the courts to ultimately decide, hearing from independent appraisers and experts.

Will this collapse the Richmond housing market?

The biggest remaining worry is whether or not this will permanently harm the ability of people in Richmond to get new mortgages. One of the main arguments from the banks is that the housing market is recovering at a rapid clip, and if this process scares off lenders then it could both hurt all future homeowners and the fragile recovery.

It's early to tell whether or not this would be an issue, and if so how big it would be. As Peter Dreier, a professor at Occidental College and an expert on housing policy, argued in the Richmond case, stabilizing the mortgage market is far more important in making credit widely accessible. Banks always, as a rule, threaten on this front on all consumer related issues, yet with a stable mortgage market Richmond would make a reasonable investment opportunity.

At the end of the day, isn't eminent domain shady?

Eminent domain gets a well-deserved negative rap for its role in so-called urban renewal projects, and many other instances of the state taking from the poor or even average citizens to give to the rich and developers. Just listen to Fugazi.



However, there's an important role for eminent domain in forcing coordination among many different agents who, for a variety of institutional and legal reasons, find it hard to coordinate among themselves. The story about how mortgage originators abused their responsibility in originating mortgages, at the expense of both investors and borrowers, is well-understood. But what is equally well-documented but less understood is that what is going on in the foreclosure process is the mirror image of that same thing. Fundamentally, these problems are the type eminent domain can solve.

Meanwhile, some seven years since the housing market collapsed, the country is still fundamentally dealing with the same issues. The federal government and the administration had multiple attempts to address these issues since the beginning of the bailouts, and they have either failed or ignored them. It is entirely appropriate that local government take the steps they need to in order to address their housing market if they can make the case to their constituents and to the courts that the situation is this desperate. Because for many people, including the residents of Richmond, California, it is.

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Calpers concerned about Richmond, California's mortgage plan

Mon, Sep 30 2013

By Jim Christie

SAN FRANCISCO (Reuters) - As Richmond, California, moves forward with a plan to help struggling homeowners by using its power of eminent domain to seize underwater mortgages, the list of those concerned about it is growing - and now includes the pension fund for many of the very same city workers pushing the plan.

The \$268 billion California Public Employees' Retirement System, the nation's largest public pension fund, joins banks and other investors in worrying that Richmond's plan will undermine the value of its holdings.

Calpers holds about \$11 billion in income-producing mortgage-backed securities, though it calculates it has just \$27,000 in exposure to mortgages targeted by Richmond.

"We are sympathetic to homeowners but as fiduciaries our focus must be in the best interests of our members," Calpers spokesman Joe DeAnda told Reuters in the fund's first public statement on Richmond's plan. "We are watching the issue closely and have some concerns about the precedent this may set and the impact to investors."

Meanwhile, the Service Employees International Union, which represents 452 of Richmond's roughly 900 employees, most of whom are members of Calpers, is a full-throated backer of the first-of-its-kind eminent domain plan.

SEIU President Mary Kay Henry said in a statement that the plan is an overdue measure to prevent more foreclosures: "Tired of waiting on the banks and regulators, community groups and labor unions, including SEIU members, are taking action to find solutions locally."

The opposing stance of two organizations charged with protecting the financial interests of the same group of employees shows some of the complexities that have made it difficult to remedy ongoing problems created by the 2007 housing bust.

The SEIU considers the fears of institutional investors over the possible impact to their holds such as Calpers to be unfounded scare tactics. It is more concerned with helping families struggling with their mortgage payments.

Located east of San Francisco and home to an oil refinery, Richmond is a world away from the towns on the other side of the San Francisco Bay that are populated by the Silicon Valley elite.

Under the plan, Richmond would buy up underwater mortgages for 80 percent of the homes' current appraised value. The plan contemplates writing down the debt and letting homeowners refinance.

Supporters say the plan would help avert foreclosures and make mortgages more affordable in a city plagued by a high percentage of underwater loans -- a situation in which the balance owed on a mortgage exceeds the value of the property itself. Fully half of Richmond's mortgage borrowers are underwater.

"If the program succeeds it will help homeowners get principal reduction, which will help people stay in their homes and some day own their homes," said Doris Ducre, a 60-year-old lab technician. She said her four-bedroom home in Richmond was last appraised at less than \$200,000, well below the roughly \$400,000 she owes on it.

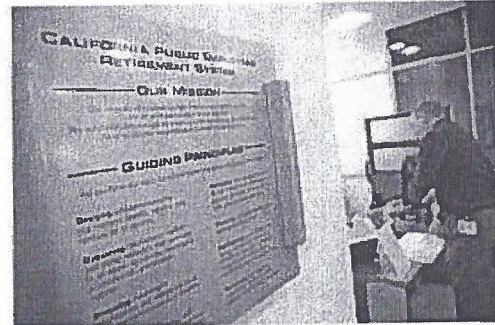
LOBBYING CALPERS

George Linn, spokesman for the Retired Public Employees' Association of California, a group of retirees and active employees of Calpers, sympathizes with borrowers like Ducre, but he sees the plan as a risk for any investor in mortgage-backed securities. He intends to press that point at the next meeting of Calpers' investment committee.

"This may have far-reaching effects," he said. "It's not just in Richmond that people find themselves under water with their mortgages."

Richmond could use eminent domain, a power typically used to seize property for public purposes such as building roads, to acquire mortgages if the investors holding the mortgages turn down offers to buy homes at deep discount to the value of the loans.

Richmond has already made offers for 624 delinquent and performing mortgages, spurring critics to say it is lending its eminent domain power to Mortgage Resolution Partners, the investor group that pitched the plan to Richmond and could split profits from refinancings with the city.



The financial debate swirling around the plan doesn't matter to Millie Cleveland, an SEIU field representative for Richmond who shares Mayor Gayle McLaughlin's view of the plan. "Now we have the political will to take on the banks," she said.

Banks -- Wells Fargo & Co, Deutsche Bank AG, Bank of New York Mellon -- are contesting Richmond's plan, but as trustees for others with stakes in mortgages in the city. And like Calpers, those bondholders -- which include BlackRock Inc, DoubleLine Capital LP, Pacific Investment Management Co, Fannie Mae and Freddie Mac - are concerned Richmond may prove a precedent.

"The fear is that it'll open a floodgate," said Vince Fiorillo, president of the board the Association of Mortgage Investors and global sales director at DoubleLine Capital.

Richmond's city council voted 4-3 to advance the plan earlier this month, but it would need a fifth vote to actually begin seizing mortgages, and it's not clear when such a vote might take place.

Wells and Deutsche Bank sued in federal court in San Francisco to halt the plan, but the suit was dismissed as premature. Bank of New York Mellon is pressing a separate suit against Richmond.

(Corrects headline, and 1st and 2nd paragraphs to show that Calpers is concerned over the plan, not that it says it is opposed to it)

(Reporting by Jim Christie; Editing by Leslie Adler)

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The Washington Post [Print](#)

Richmond's rules: Why one California town is keeping Wall Street up at night

By Lydia DePillis, Updated: October 5, 2013

Very early on a Wednesday morning in September, the city council of Richmond, Calif., did something that no American city had yet managed: It voted for a plan to wrest underwater mortgages from the hands of Wall Street, depriving investors of tens of millions of dollars in order to save borrowers from foreclosure.

For communities across the land -- North Las Vegas, San Bernardino County, Calif., Chicago -- where too many are stuck with house payments beyond what they can afford, this was the nuclear option. While those cities backed away, Richmond hit the button.

The mechanism? Eminent domain, the power of the government to seize private property for public use, which has not typically been used to help poor neighborhoods. After five years of the federal government gently nudging banks to forgive homeowners debt they took on in better days, cities have found a legal weapon the financial industry truly fears.

The stability of those housing markets, and the banks that profit from it, could depend on the fallout.

The strategy's complexity has left stakeholders to lean on dogfight rhetoric: From the community activists, "Save homes, stop foreclosures." And the Realtors, "Stop investor greed." And the lawyers for the investors, "Prevent this unconstitutional investment scheme."

In short, here's how it would work: Richmond condemns mortgages on homes that are now worth far less than what the borrower owes. The note holders -- investors such as pension funds and mutual funds -- are forced to settle for the current fair market value. The city pays for this with cash from a new set of investors, who now own the mortgage. The new price is set by the current market, and the homeowner settles into a more manageable loan.

It's that smashing of the bond between lender and debtor that animates investors. They've acted aggressively to stop it, lobbying the mayor and council members directly. Wells Fargo and Deutsche Bank, on behalf of scores of investment funds, sued to stop the plan. The securities industry points out that the plan would also hurt pensioners who own pieces of Richmond's mortgages. Indeed, last week, California

Public Employees' Retirement System -- the safety net for some Richmond workers -- expressed concerns.

Richmond couldn't get insurance to shield it from a crushing judgment -- if it lost its bid to spare struggling homeowners, the city could find itself underwater. In the backlash to the plan, the market boycotted the city's most recent bond issuance, forcing it to withdraw the \$34 million offer, which was supposed to refinance earlier debt.

Richmond's leaders stared hard at the threats. In the end, it seemed to only harden their resolve.

"They sold everybody a dream, and said 'you have to own a home, or you're not American,'" said Council member Joel Myrick, explaining to an auditorium packed with yellow T-shirts (those for seizing the mortgages) and red (those against it) why he voted in favor of using eminent domain. "I am not willing to allow people to be dependent on the generosity of these same banks that are suing us in order to be able to pay off their loan before they die."

After the council vote, a district court judge threw out the investors' complaint as premature -- not on its merits, but because the city hadn't actually seized any mortgages yet.

"This is not a victory for the program and only postpones the day that Richmond and Mortgage Resolution Partners will have to defend this program in court," the banks' lawyers said in a statement.

A courtroom victory for Richmond, a town of about 100,000, could give cities around the country the courage to act -- and potentially help keep millions of people in their homes. But even a win could spell defeat for Richmond if the financial industry cuts off lending to make an example of the city.

So why hit that button? And what would it mean if other cities did the same?

Three minds, one conclusion

The plan for using eminent domain to seize mortgages has at least three parents: Cornell Law professor Robert Hockett, Loyola University's Lauren Willis and Harvard's Howell Jackson, who independently came out with similar proposals as the housing market was starting to collapse.

"We all three came to the idea more or less at the same day back in September of 2008," said Hockett, who went on to become the strategy's chief academic exponent. "It became clear that housing prices were going to drop in a profound way, and that there were going to be a lot of foreclosures."

They noticed two things.

First, although it was in the banks' interest to write down the principal on loans to avoid an outright default -- after all, it's better to get something than nothing -- the mortgages that had been reshuffled into pools of securities owned by many different investors were much more difficult to modify, because so many different investors would have to sign off on the change. Because of that, these "private label securitized" loans are much more likely to default than the banks' portfolio loans.

And second, governments could help unwind that tangle by using eminent domain to facilitate an exchange between a bunch of investors who were likely to lose most of their money to a few other investors who'd give them cash up front equal to the fair market value of the loan. In effect, it's breaking what Yale housing economist Robert Shiller calls real estate's collective action problem, wherein a large group of investors can't coordinate to act in their shared best interests.

At first, Hockett thought he might be able to get it done on the federal level, through the Troubled Assets Relief Program. He says he had strong interest from someone high up on Barack Obama's 2008 presidential campaign team, but it quickly waned. "It became clear they were going to bail out the banks directly, rather than help them indirectly, by helping the homeowners," Hockett said.

Then-Rep. Brad Miller (D-N.C.) proposed his own version of the idea, a throwback to a New Deal-era government agency that bought distressed mortgages from banks and relaxed requirements on their borrowers, taking the edge off a ballooning real estate crisis. It attracted some interest on the Hill, but didn't make it into the final mortgage relief programs, which ultimately helped far fewer people than envisioned.

Frustrated with the feds, Hockett started throwing around the idea with a friend of his, a former Rhodes Scholar and banker named John Vlahoplus. They decided their plan could better be accomplished by states and municipalities. To do that, they'd need money.

Passionate support

The day before Richmond's city council meeting, on the steps of San Francisco's City Hall, City Supervisor David Campos (D) held a news conference to announce his support for Richmond's plan. Backed by homeowners bearing the wonky slogan, "We need principal reduction," speakers railed against banks like Wells Fargo.

"For the rich, eminent domain works," preached the local Archbishop Franzo King. "But when the poor or black or brown people see it as a solution to a problem the banks don't feel like dealing with, we're on the wrong foot. We're going to put these banksters on the run!"

At the edge of the sidewalk, a man with a white beard, baseball cap and sunglasses leaned against a lamppost, watching quietly. He's actually the guy responsible for it all: Steven Gluckstern, a former insurance executive who had teamed up with Vlahoplus to co-found Mortgage Resolution Partners, the firm that's lining up the capital -- from hedge funds, for instance -- to buy any mortgages that Richmond might seize. After that happens, Mortgage Resolution Partners would help the homeowner refinance through a Federal Housing Administration loan, and earns a \$4,500 fee per successful transaction.

Gluckstern knows the process is more complicated than the ralliers are making it out to be -- for one, the banks pushing back don't own these mortgages, but they are obligated to act on behalf of the investors who do.

Even so, "it's helpful to have a bad guy," Gluckstern says. Wells Fargo, headquartered across the plaza, makes a good one. This is the kind of activism that was missing in San Bernardino County, one jurisdiction to have seriously considered using eminent domain and opted against it after a sustained opposition campaign and little community support. Besides, he says, the financial services and real estate industries are going all out.

"The opposition is so vehement because it's the 'shoot-the-puppy' strategy," Gluckstern said, in his shiny Volkswagen SUV on the way to his storefront personal office in a cute neighborhood in the southern part of the city (Mortgage Resolution Partners used to maintain an office downtown but closed it to save money). "If this can take hold in one community, and other communities see that it can happen, and the sky doesn't fall, and people see that homeowners can be kept in their homes, you're going to see the tidal wave, which the other side's figured out."

That's an accurate read of the situation. In court filings, the banks suing Richmond estimated that investors stood to lose \$200 million if all eligible city homes received write-downs. Fannie Mae alone says that if the program were extended nationwide, the government-owned mortgage giant could theoretically lose \$24 billion. Even if this crisis is unique and there's no reason Richmond would need to use eminent domain in the future, as Gluckstern argues, the industry would much rather not see anybody else use it even once. Besides, they worry, what's next: Underwater car loans? Student loans? Credit card debt?

"There is no doubt, investors will not put capital to work in a jurisdiction where there is a threat of a taking," said Tim Cameron, the Securities Industry and Financial Markets Association's point person on the issue. "We're going to go to those with the best credit, and where the belief in property rights are sound."

For Gluckstern, the bigger problem is getting any support from entities in the Washington establishment whose opinions carry weight. The Federal Housing Finance Administration has warned it will stop Fannie Mae and Freddie Mac from lending in jurisdictions that use eminent domain to seize mortgages. Since private lending is at a standstill, that would effectively put Richmond's real estate market into a deep freeze.

While national fair housing organizations condemned FHFA's threat as "redlining," since it would cut off credit to a disproportionate number of Hispanics and African Americans, other big groups - such as the National Housing Institute, National League of Cities and National Housing Conference -- have been skeptical of the city's approach as well.

"I just don't think cities are going to want to take up the work," said Linda Couch, policy director at the National Low Income Housing Commission. "Implementing eminent domain and buying up the properties is the easy part. How do you know that

a city manager is going to know how to right size a mortgage? Does the city then become responsible for evicting people if things don't work?"

Even credit unions, which made lower-risk loans and are rooted in their communities, decry the plan. David Green is president and chief executive of the Contra Costa County Federal Credit Union, which serves city, county and state employees. He says he's maintained strict underwriting standards and has foreclosed on only three homes in the past few years. Green says he doesn't think investors should be bilked through eminent domain.

"I don't agree with what they're doing, especially since it hits so close to home," Green said. "I think their heart's in the right place, I just think it's the wrong vehicle for doing it."

Gluckstern has made the rounds in Washington, too, with little success: Richmond's own congressman, George Miller (D), only reluctantly sent a letter encouraging Bank of America to do more principal write-downs.

Gluckstern, frustrated by the timidity, is starting to sound like an Occupy Wall Street person himself.

"I think most politicians don't give a [expletive] about the middle class," he said. "I think they wish they'd go away. It's hard to know what to say to people about the fact that the rich keep getting richer -- how long do you think we can sustain that? It's way too unequal, and the consequences for my grandchildren are going to be severe." It seems he's given this spiel before, including the doomsaying conclusion.

"And then what happens? The French Revolution."

Entrenched positions

Neutral parties are hard to find in Richmond.

Mortgage Resolution Partners has lots of investors to pay back (it's spent more than \$7 million promoting the plan and paying Richmond's legal fees). Underwater homeowners are eager to see their debt reduced and loans locked in at a lower interest rate. The pension and mutual funds that own the securitized mortgages don't like the precedent of government seizing their assets.

Real estate agents don't own the homes or the mortgages. They mostly care about a healthy market. But having decided eminent domain would be a disaster, they signed on as ground troops for the opposition. In Richmond, the local Realtors' association detailed 30-year veteran Jeff Wright to lead the charge.

As part of that mission, Wright offered a tour of the city to prove that Richmond isn't the hardscrabble suburb it's been made out to be -- and that it doesn't need to take the kind of drastic measures the city council is contemplating.

Wright pulled up to the El Cerrito Bay Area Rapid Transit railway station in a silver Mercedes and shades, wearing a starched shirt with gold cuff links and a carefully tended goatee, easily recognizable from the glossy attack mailers warning that

Wall Street was coming to "take a bite out of" Richmond's homes. First stop: The house in the lower-middle-class neighborhood of South Richmond where he grew up. Wright scans for boarded-up houses and finally finds one.

"If you see a news account of Richmond, they take the picture here, because that gives the slant of poverty and not looking so great," he said, punctuating his sentences with pauses and hand gestures. Then we drove west toward Point Richmond, which has breathtaking views of San Francisco Bay and large houses with expensive cars in their driveways.

"Did you know that some of the houses on the list are in here?" Wright asks, affecting astonishment. "Guess they need some help, too."

That's one of the pro-eminent domain contingent's public relations failures. They included all owner occupied underwater mortgages locked up in private label securities on their initial list of 624, even those that were current on their payments. While

activists and city officials have said they'd probably reevaluate whether the borrower really needed help before seizing the mortgage, opponents have successfully used the cluster of listed homes in wealthy neighborhoods to characterize the whole program as an indiscriminate bailout for the wealthy.

Our tour of not-struggling Richmond continued.

"Okay, this is a country club," Wright said, pausing for effect as we passed a gated golf course. "The *Richmond* Country Club." And then, climbing the heights behind it: "This is called Country Club Vista. Country Club Vista: Why? Because it overlooks a country club. This is poor, impoverished Richmond," he finished, chuckling to himself.

The Realtors' opposing argument breaks down into three basic parts.

The first is self-interested. They're terrified of giving lenders and bond buyers any reason to look twice at Richmond, which is what appeared to happen when nobody bit at the \$34 million bond issue it floated in July. Wright uses a grocery store analogy to explain his fear.

"All prices being the same. If I reach for a can of beans and there's a dent in the can, you know what I do? I put it back on the shelf and get the can that has no dent in it," he said. "The contents might be okay, but I don't want the dented can. In a sense, Richmond's bonds are like a dented can."

Is that actually how bond buyers operate? Yes and no. Deborah Lucas, a municipal finance expert at MIT's Sloan School of Business, points out they could see the threat of eminent domain as a signal that the bonds are risky, even if they buy Gluckstern's argument that a seizure would never happen again. At the same time, though, bond markets are broad and deep. "The effect of a boycott by some investors would only be to drive up yields, which would attract others to take their place," Lucas said.

The second sort of argument the Realtors make is ideological. Richmond conservatives also fought Green Party Mayor Gayle McLaughlin on a proposal to tax soda, which Wright sees as evidence of a "nanny state," just like intervening to break a contract with a lender to help out someone who shouldn't have taken out that loan in the first place, he says.

"Did you have to buy that property? No, you didn't," he said. "If people can show me where their signature was forged on the document, or you can show me you had to sign under duress, lender put you in a chair, tied you up, put a gun to your head and said 'you're going to do this loan,' I will shut the hell up and go to the other team."

Advocates respond that personal responsibility is irrelevant: In a world where more people held good jobs and banks had lower standards, paying a high price seemed perfectly reasonable. After all, many people had fared well in a booming housing market.

Besides, the thinking goes, in the aggregate investors would be better off getting fair market value now than losing the entire value of those securitized loans that tend to fail at about a 30 percent higher rate than regular bank-owned ones.

The last argument has to do with what's good for the neighborhoods. Wright figures that there's no inherent harm in a foreclosure -- if someone defaults and leaves, the market is hot enough that someone else will take their place.

"So now the family that got foreclosed on. They're gone, that's unfortunate, but now another family's in there," he said. "So it's transitioned in the same way as my neighbor's, who's put his house up for sale. Transition is transition. One's voluntary, one's involuntary. What harm is caused to the community by one family moving out and another family moving in?"

But this is the biggest point eminent domain advocates have to drive home: That foreclosures are so devastating to a community, and more of them are so inevitable, that it's worth risking the wrath of markets to make them go away. So they'll talk about how foreclosures lower property values and therefore tax revenue, replace stable homeowners with investor-owned homes full of shiftless renters and demoralize a community. In Richmond, it's been enough to convince city leaders they have little left to lose.

Too late for many

The tragic thing, for Richmond and other cities, is that even if they decide to use eminent domain, it will be too late for many of the worst affected. Two thousand Richmond homes have gone into foreclosure in three years, and about 1,600 more homes with underwater mortgages are wrapped up in private-label securities. Meanwhile, housing values are on the rise, which means that they're less valuable for investors that might supply the funds to buy them from those securitized pools.

Nationally the situation is similar; the plan wouldn't help 4.4 million households that Corelogic estimates have foreclosed since the beginning of the financial crisis in

September 2008. Another 4.5 million investor-owned loans are still underwater, by Hockett's estimates.

Some Richmond residents have adapted to the new normal.

Take Ricardo Cabral. He lost his house in Oakland to foreclosure eight years ago after losing his job in construction, his back wracked with the pain of decades as an ironworker. He moved with his wife and daughter to Richmond, where they rented a house from a friend until that house was foreclosed on as well.

They found another place in the city's notoriously run-down and dangerous Iron Triangle, renting it for \$1,200 per month. Cabral, who stays home with four chihuahuas while his wife goes to work in Marin County, keeps the lawn neat and tidy. They try to ignore the gunshots that ring out at night and figure they'll stay as long as they can, having given up on the idea of actually buying a house ever again.

"I don't own the home, but I'm very happy," Cabral said. "I'm here to stay in Richmond, not Oakland."

Cabral is hopeful that the city will be able to pull off its plan, but he's skeptical.

"If it comes true for the people, hooray for them, hooray for Richmond," he said. "If you can back your story up and say, 'Hey, you're for the underdog, you're going to help people keep their homes,' I'm all for Richmond. Right now, you're just a piece of paper saying this is what you're going to do, and you ain't done nothing, yet."

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United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Trustee, et al.,

Plaintiffs,

v.

CITY OF RICHMOND, CALIFORNIA, a
municipality, and MORTGAGE RESOLUTION
PARTNERS LLC,

Defendants.

No. C 13-03663 CRB

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS AND
DENYING PLAINTIFFS' MOTION FOR
A PRELIMINARY INJUNCTION**

Before the Court are Plaintiffs' Motion for a Preliminary Injunction (dkt. 8) and Defendants' Motion to Dismiss (dkt. 38). For the reasons stated in open court at the hearing held on September 12, 2013, the Court finds that Plaintiffs' claims are not ripe for adjudication.¹

The Court further concludes that it must dismiss the case rather than hold it in abeyance. Ripeness of these claims does not rest on contingent future events certain to occur, but rather on future events that may never occur. In contrast to the facts in the cases Plaintiffs cite,² such as

¹ See Texas v. United States, 523 U.S. 296, 300 (1998) ("A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.") (quoting Thomas v. Union Carbide Agric. Prods. Co., 473 U.S. 568, 580-81 (1985)); Freedom to Travel Campaign v. Newcomb, 82 F.3d 1431, 1441 (9th Cir. 1996) ("The mere possibility that [an official] may act in an arguably unconstitutional manner . . . is insufficient to establish the real and substantial controversy required to render a case justiciable under Article III.") (internal quotation omitted).

² See, e.g., Wheaton Coll. v. Sebelius, 703 F.3d 551, 553 (D.C. Cir. 2012) (case not fit for review and "should be held in abeyance pending the new rule that the government has promised will be issued soon"); Am. Petroleum Inst. v. EPA, 683 F.3d 382, 390 (D.C. Cir. 2012) (case held in


United States District Court
For the Northern District of California

1 proposed agency rules that will become final in some form, or pending suits in other jurisdictions
2 that will reach some disposition, the issues here may never reach a resolution. Plaintiffs are not, for
3 example, challenging a proposal of the City Council that may or may not raise constitutional
4 concerns depending on the contours of the final version—put simply, there may never be a “final
5 version.” Because there is no point at which it will be determined that Plaintiffs’ claims are not ripe
6 and will never become ripe, the matter could linger in abeyance for an indefinite period of time.
7 Under these circumstances, a stay is not appropriate.

8 Accordingly, the Court DENIES Plaintiffs’ Motion for a Preliminary Injunction and
9 DISMISSES this matter for lack of subject matter jurisdiction without prejudice.³
10 **IT IS SO ORDERED.**

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Dated: September 16, 2013



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

26 _____
27 abeyance until agency’s final action on proposed rule); Pardee v. Consumer Portfolio Servs., Inc., 344
28 F. Supp. 2d 823, 839 (D.R.I. 2004) (case not ripe and proceedings stayed until related cases in other
jurisdictions resolved).

28 ³ Plaintiffs argue that they should be granted leave to amend their complaint to address the
ripeness deficiency. The Court that finds that no amendment at this point would cure the lack of subject
matter jurisdiction. Nor does the Court find it appropriate to impose conditions on dismissal,
particularly given that the Court’s lack of jurisdiction is the very reason for dismissal.