

Killian, Chris

From: Killian, Chris

Sent: 8 Aug 2013 03:46:02 +0000

To: Killian, Chris

Subject: FW: (Additional Suit): Bondholders Sue Richmond: WSJ / Bloomberg Stories

Attachments: BNYM-File-Stamped Complaint & Supporting Documents.pdf, Complaint August 7, 2013.pdf

Apologies for the multiplicity of emails. This should be the final one for tonight. There is an additional lawsuit attached, filed this evening, that is likely to be of interest.

-Chris

Chris Killian

Managing Director, Securitization

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From: Killian, Chris

Sent: Wednesday, August 07, 2013 11:40 PM

To: Cameron, Tim; Chamberlain, Kim

Subject: (Additional Suit): Bondholders Sue Richmond: WSJ / Bloomberg Stories

To: **Eminent Domain Industry Coalition**
Eminent Domain Working Group
SSG Gov Reps

All,

Please find attached a complaint filed today by BNY Mellon as trustee for various RMBS trusts naming Richmond, CA, Richmond City Council, Mortgage Resolution Partners L.L.C., and Gordian Sword LLC (MRP's manager) as defendants.

Regards,
Chris

Chris Killian

Managing Director, Securitization

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From: Killian, Chris

Sent: Wednesday, August 07, 2013 9:22 PM

To: Killian, Chris; Cameron, Tim; Chamberlain, Kim

Subject: Bondholders Sue Richmond: WSJ / Bloomberg Stories

To: **Eminent Domain Industry Coalition**
Eminent Domain Working Group

SSG Gov Reps

All,

FYI on the Bloomberg and WSJ stories linked to below regarding a lawsuit filed by two RMBS trustees in the San Francisco Federal Court today. Politico Pro also has a similar story, if you have access to that news service. See attached for a copy of the complaint that was filed.

Regards,

Chris

Chris Killian

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http://online.wsj.com/article/SB10001424127887324522504578654690187664354.html?mod=wsj_nvie_w_latest

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

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

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 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, that were directed to act by a group of investors, which includes BlackRock Inc., Pacific Investment Management Co., as well as Fannie Mae and Freddie Mac, 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 partnering with Mortgage Resolution Partners, a private investment firm based in San Francisco, which was also named a defendant in the lawsuit.

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 interstate commerce. The lawsuit also argues that loans aren't being seized for a valid public purpose—a key criteria 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 taxpayers, and unfair to millions of individual savers and investors," John Ertman, a partner at Ropes & Gray in New York.

An MRP representative didn't immediately respond to requests for comment Wednesday. 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, roads or shopping centers. Owners of the properties 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, the Cornell University law professor who was an early advocate of 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," said Richmond Mayor Gayle McLaughlin 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.

Write to Nick Timiraos at nick.timiraos@wsj.com

<http://www.bloomberg.com/news/2013-08-07/bondholders-sue-california-city-to-block-mortgage-seizures-1-.html>

Bondholders Sue California City to Block Mortgage Seizures

By Jody Shenn & Karen Gullo - Aug 7, 2013 7:24 PM LT

Mortgage-bond trustees sued Richmond, California, and Mortgage Resolution Partners LLC in a bid to block the city's plan to seize home loans from the securities, saying the initiative would hurt savers and retirees.

A court order barring the use of eminent domain should be granted because the program is unconstitutional, according to a complaint filed today in federal court in [San Francisco](#). The trustees -- [Wells Fargo & Co. \(WFC\)](#) and Deutsche Bank AG -- were directed to take the action by a group of investors in the debt including Pacific Investment Management Co. and [BlackRock Inc. \(BLK\)](#), said John Ertman, a partner at Ropes & Gray LLP.

"Mortgage Resolution Partners is threatening to seriously harm average Americans, including public pension members, other retirees and individual savers through a brazen scheme to abuse government powers for its own profit," Ertman said in a e-mailed statement on behalf of investors.

The plan advanced last month with Richmond backing offers to buy 624 loans. Those would need to be refused before the city could follow through with its mayor's vow to invoke its potential powers to force sales of the mostly non-delinquent loans, so that homeowners could get their debt balances cut to less than the current values of their properties.

The case is Wells Fargo Bank v. City of Richmond, 13-3663, U.S. District Court, Northern District of California (San Francisco).

To contact the reporters on this story: Jody Shenn in [New York](#) at jshenn@bloomberg.net; Karen Gullo in San Francisco at kgullo@bloomberg.net

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