

New Filings Reinforce the Need to Stop Eminent Domain Mortgage Seizure Scheme in Richmond, CA

Materials illustrate the damage the scheme would inflict on millions of savers and retirees and the Richmond and U.S. housing markets

San Francisco, CA – Important new documents were filed today in the lawsuit to prevent alternative investment firm Mortgage Resolution Partners (MRP) from proceeding with the City of Richmond, California to seize mortgage loans through the use of eminent domain.

Today's filings were made in direct response to MRP's false claims that this issue is not sufficiently ripe for the Court's consideration. The documents show that the actions of MRP and Richmond are well-underway and put every-day savers at risk of suffering irreparable harm.

"The evidence – including MRP and Richmond's own statements, emails and memoranda – illustrate that this case is very real, and very ripe. MRP already has taken substantial steps in implementing its loan seizure scheme in accordance with a pre-determined plan – it has targeted specific loans, made offers to acquire those loans under threat of eminent domain seizure, and is now preparing to effectuate such seizures by initiating state court condemnation proceedings," said John Ertman, Partner at Ropes & Gray LLP on behalf of the directing certificateholder group. "MRP and Richmond have flatly rejected all requests to suspend activity until the Court reviews the significant constitutional challenges. The law is well-settled that injunctive relief can be considered before millions of savers suffer irreparable harm."

If successful, MRP's loan seizure program would remove predominantly-performing mortgage loans from residential mortgage-backed securities (RMBS) trusts, forcing a loss on millions of savers and retirees nationwide.

"MRP is renting local government power to take money out of the pockets of savers and retirees across the U.S. and line their own pockets; they are disingenuously trying to avoid the Court's consideration of the illegality of the seizure scheme," Ertman added.

Today's filings further prove:

- (1) that the majority of the loans targeted by MRP are not in danger of default
- (2) if implemented, the program forces real losses on millions of savers and retirees, and
- (3) the City of Richmond's housing market will suffer from lower home values and higher lending rates.

Positive equity, not in risk of default

Contrary to MRP claims, the Program primarily targets performing loans, many of which are not "under water." From the Reply Declaration of Phillip R. Burnaman, II:

“Most strikingly, current data regarding the Target Loans indicates that many are not underwater at all. Indeed, while the decline in home prices from their peak in 2005 has created a substantial number of mortgage loans with negative homeowner equity, I calculate that roughly 31% of the Target Loans have loan-to-value (“LTVs”) below 100%, indicating that the homeowners are not “underwater,” but have substantive equity in their homes...”

“In addition, 43% of the Target Loans are underwater but are current on their payments – i.e., they are performing loans, and based on current house price trends, I would estimate that 45% of this group will reach a positive equity position or be “above water” over the next two years.” See Exhibit A [here](#).

“Contrary to the stated mission of the Seizure Program to rescue “underwater” borrowers, there is no apparent basis to include these loans in the Program to prevent them from defaulting, even allowing for the Defendants’ incorrect assumption that underwater loans are necessarily subject to a high default rate.”

Mr. Burnaman’s Reply Declaration also speaks directly to the threat posed by the scheme:

“...the eminent domain seizure of mortgage loans by the City of Richmond will cause a serious and immediate threat to the U.S. mortgage market... The Seizure Program will cause injury to PLS trusts and consequently their certificateholders, who include individual savers and investors in pension and retirement plans. The injury to citizens of Richmond and the State of California who are employed in the housing and mortgage industry is equally significant and is potentially severe. The benefits of the Seizure Program would be realized by a few and the costs would be borne by many.”

The Richmond seizure program violates multiple provisions of the U.S. Constitution, the California Constitution and California statutes:

1. The program targets for seizure mortgage loans for a private, rather than public, use, in violation of the Takings Clause of the U.S. Constitution, the California Constitution and California eminent domain law.
2. The program illegally reaches out beyond Richmond’s geographic borders to seize mortgage loans located outside of Richmond, in violation of the due process requirements of the U.S. Constitution, the California Constitution and California eminent domain law.
3. The program seeks to regulate interstate commerce, in violation of the Commerce Clause of the U.S. Constitution, by rewriting the mortgage loan contracts between local residents and out-of-Richmond and out-of-state creditors, with the resulting harm to the national mortgage and housing industry’s vastly outweighing the minimal purported local benefits of the program.
4. The program nullifies the debts of local citizens at the expense of out-of-state creditors without any legitimate public purpose, in violation of the Contract Clause of the U.S. Constitution.

More information on the lawsuit can be found [here](#).

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