



## Consumer Financial Services E-Bulletin

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Several cities throughout the State of California (and, for that matter, throughout the country) have either implemented or are toying with the idea of utilizing eminent domain to force lenders to sell underwater loans at steep discounts. As several recent articles in the Los Angeles Times and the Daily Journal reflect, the California cities of El Monte, Ontario and Fontana are considering such a move. The City of Richmond was actually the first municipality to implement the process.

The concept works like this. Using eminent domain, the municipality would force lenders to sell the loans to the municipality at their existing value as opposed to the principal balances, which could result in large losses for the lenders. The municipality would then reduce the principal balance to reflect the current value of the property and then refinance the loans or arrange to have the loans refinanced.

Recently, the City of Richmond actually sent notices to lenders asking those lenders to sell 620 “underwater” loans to the City. The City has already stated that if the lenders do not comply, the City will use its eminent domain powers to force the lenders to sell the loans to the City.

The use of eminent domain in this unusual fashion is opposed by the financial industry as well as by the Federal Housing Finance Agency (FHFA) which regulates Fannie Mae and Freddie Mac. The FHFA has announced that it would instruct Fannie Mae and Freddie Mac to “limit, restrict or cease business activities” in any jurisdiction using eminent domain to seize mortgages.

The Los Angeles Times reported that opponents have argued that using “eminent domain in this way would result in losses for public pension plans, 401(k) plans and individual investors who bought mortgage-backed securities.” It could also result in higher borrowing costs in the municipalities that embark on this plan.

Anti-Wall Street groups are spearheading the move to use eminent domain. In an interview with The Los Angeles Times, Andre Quintero, the Mayor of the City of El Monte stated that he is an advocate of the plan despite the powerful opposition.

“It is a little frustrating,” Mayor Quintero stated: “Wall Street got a lot of the bailouts and benefits, and you are seeing the market has really shot back to life in really a huge way, but Main Street is still suffering.”

Rather than waiting for the eminent domain process to play out, some lenders

have taken the step to file lawsuits in the U.S. District Court in Northern California. The Financial Institutions Committee of the Business Law Section has issued an E-Bulletin reviewing the Complaints from these lawsuits. Attached to this E-Bulletin are copies of two complaints and also the Financial Services Committee's E-Bulletin.

Only time will tell how many jurisdictions implement an eminent domain plan to purchase distressed loans, whether the Courts will allow this process to continue and, if the Courts do permit this tactic, the impact the taking of these loans by eminent domain will have on the housing market and lending in those jurisdictions.

For more information, please contact [Gary Barr](#) at Alpert, Barr & Grant, APLC in Encino.

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