EMINENT DOMAIN FOR UNDERWATER MORTGAGES: ALREADY ON THE WAY TO THE BOTTOM OF THE SEA OF BAD IDEAS

by Dwight H. Merriam[*]

On the surface, it seemed like such a good idea.[1] So many hapless people, victims of a perfect storm of bad lending practices and a deep economic recession, trapped in homes now "underwater" and valued at amounts far below what was owed on them. Who would rescue them? How could it be done?

The federal government could have fixed the problem. There is widespread agreement that mass mortgage refinancing, which would necessarily include discounting the mortgages, has long been the surest way to quickly address the problem of short sales and foreclosures. (Principal write-down is not a viable option, though some have considered it.) One possible alternative would be to create a government-financed trust that would buy mortgages made at higher rates and then offer refinancing.[2] To date, however, the federal government has done little, and those programs it has initiated—the Home Affordable Refinance Program (HARP) and the Home Affordable Modification Program—have proven largely ineffective.[3] Refinancings under HARP have declined even as interest rates have risen from historic lows—only half as many HARP refinancings were processed in 2013 as in 2012, and, unless there is a "HARP 3," the program will expire at the end of 2015.[4]

The city of Richmond, California, exemplifies the problems apparently brought on by the foreclosure crisis. Richmond has witnessed the emergence of what its mayor, Gayle McLaughlin, calls "destabilized" neighborhoods.[5] Mayor McLaughlin attributes this troubling development to the foreclosure

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[1] For insight into the genesis of this idea, see Robert C. Hockett, *Paying Paul and Robbing No One: An Eminent Domain Solution for Underwater Mortgage Debt*, CURRENT ISSUES IN ECONOMICS AND FINANCE, Vol. 19, No. 5 (2013), *available at* http://ssrn.com/abstract=2173358 *and* http://www.newyorkfed.org/research/current_issues/ci19-5.pdf.

[2] Joseph E. Stiglitz & Mark Zandi, *The One Housing Solution Left: Mass Mortgage Refinancing*, N.Y. TIMES (Aug. 12, 2012), http://tinyurl.com/k9m6klq; Allan Sloan, *Time to consider mass mortgage refinancings*, WASH. POST (Jan. 17, 2012), http://tinyurl.com/n42qmd2.

[3] *See, e.g.*, Mark Greene, *Why HARP Isn't Working*, FORBES (Oct. 17, 2012, 11:07 AM), http://www.forbes.com/sites/moneybuilder/2012/10/17/why-harp-isnt-working/. The Federal Housing Finance Agency (FHFA) has extended the program to December 31, 2015, claiming that "More than 2 million homeowners have refinanced through HARP, proving it a useful tool for reducing risk." News Release, Federal Housing Finance Agency, FHFA Extends HARP to 2015 (Apr. 11, 2013), *available at* http://www.fhfa.gov/webfiles/25112/HARPextensionPRFINAL41113.pdf.

[4] Tim Grant, *Home Affordable Refinance Program falls as interest rates rebound*, PITTSBURGH POST-GAZETTE (Mar. 15, 2014, 8:18 PM), http://www.post-gazette.com/business/2014/03/16/Refinance-program-falls-as-interest-rates-rebound/stories/201403160085.

[5] *See, e.g.*, Laura Flanders, *Meet the Mayor Who's Using Eminent Domain to Fight Foreclosure*, NATION (Nov. 20, 2013), http://www.thenation.com/article/177296/meet-mayor-whos-using-eminent-domain-fight-foreclosure.

crisis.[6] (Indeed, Richmond saw 900 foreclosures in 2012, and there were "as many in the pipeline" for 2013.[7]) McLaughlin blames the crisis itself on the banks, which she accuses of predatory lending.

Foreclosure has in fact become an enormous problem for much of the country. Many working-class homebuyers are now suffering tremendous financial burdens; typical of them are Rodney Conway and his wife, Vicki, of Richmond. Back in the high-flying market of 2005, they bought a 950-square-foot, two-bedroom home in Richmond for $340,000. It is worth just $140,000 today. The Conways still owe Bank of America $320,000 and are making payments of $2,000 a month. Rodney Conway is disabled following an accident that occurred in 1983 while he was on active duty in the Navy, and Vicki's office job adds just enough to Rodney's disability check for them to barely make ends meet. Says Rodney: "We don't take trips or go to restaurants. We just went to a movie for the first time in a year. I'd like to be able to give my wife a nice birthday present, but I can't afford it."[8] The Conways are not alone, of course; as of December 2013 more than 9.3 million American homeowners, together holding 19 percent of all mortgages, were still underwater,[9] and more than 5 million other families have lost their homes to foreclosure.[10] With the end of the recession, there has been improvement. By the end of 2014, only 11 percent of homeowners had *no* equity in their homes.[11] The amount of negative equity, even with this somewhat improved situation, remains large: $348.8 billion at the end of 2014, an increase of $7 billion from the third quarter of 2014.[12]

But even for those in positive territory, the losses they suffered during the recession may keep them trapped in their homes because they are not credit worthy. Ten million homeowners (20 percent of all who have positive equity) still have less than 20 percent equity, and 1.4 million of those have less than 5 percent equity.[13]

Not all of those to be bailed out are among the working class, however. Many high-value properties in Richmond are also being offered a helping hand. Loans on two properties exceed $1 million; 43 are

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[6] *See California City Threatens to Use Eminent Domain to Stop Bank Foreclosures*, DEMOCRACY NOW (Aug. 6, 2013), http://www.democracynow.org/2013/8/6/california_city_threatens_to_use_eminent [hereinafter DEMOCRACY NOW, McLaughlin Interview] (transcript of radio interview with Gayle McLaughlin, mayor of Richmond, California).

[7] As of April 14, 2014, RealtyTrac reported that the actual number of foreclosures "in the pipeline" in Richmond, Calif., was 724, and that the number of new foreclosure filings in February 2014 was just over 40. *Richmond Real Estate Statistics and Foreclosure Trends Summary*, REALTYTRAC, Through February 2015, foreclosures have been running at an almost even pace of nearly 40 per month. *Richmond Real Estate Trends & Market Info* REALTYTRAC (Mar. 29, 2015) http://www.realtytrac.com/statsandtrends/foreclosuretrends/ca/contra-costa-county/richmond (last visited April 14, 2014).

[8] Peter Dreier, *To Rescue Local Economies, Cities Seize Underwater Mortgages Through Eminent Domain*, NATION (July 12, 2013), http://www.thenation.com/article/175244/rescue-local-economies-cities-seize-underwater-mortgages-through-eminent-domain.

[9] Thankfully, this number is down from 10.9 million homes and 26 percent of mortgages in January 2013.

[10] Les Christie, *Far fewer mortgage borrowers 'deeply underwater'*, CNNMONEY (Jan. 9, 2014, 7:13 AM), http://money.cnn.com/2014/01/09/real_estate/underwater-mortgages/.

[11] Jann Swanson, *Week Year-end Home Values Increased Underwater Numbers*, Mortgage News Daily (Mar. 17, 2015) http://www.mortgagenewsdaily.com/03172015_corelogic_negative_equity.asp.

[12] *Id.*

[13] *Id.*

above $600,000; and 121 are over $500,000. The average loan balance is $387,800; the median is $378,920.[14]

One might expect Richmond to enjoy the same strong housing market as the rest of the Bay Area. It is outside the fog belt, and thus enjoys beautiful weather, like nearby Marin County. In addition, Richmond offers many other features that typically make for a highly successful community: scenic vistas of rolling hills, a majestic view of the Golden Gate Bridge, a harbor, miles of coastline, a good employment base, and private and public transportation infrastructure. But a major problem in Richmond, important in understanding its housing economy issues, is crime. In 2010, it was ranked the sixth most dangerous city in the country based on FBI crime statistics.[15] Banks did not target Richmond for predatory lending practices, nor are they the only cause of the city's current problems. In Richmond the 2012 violent crime rate was 2.9 times the national average, while its 2012 property crime rate was 2.5 times the national average.[16] These rates were almost as high immediately before the foreclosure crisis: in 2007 they were 2.7 and 2.3 times the national average, respectively.[17] In short, the destabilized neighborhoods may be more the result of longstanding economic and social conditions and not the foreclosure crisis, though the crisis may have exacerbated the problems.

Still, Mayor McLaughlin blamed the banks for Richmond's "destabilized" neighborhoods rather than accept responsibility for the city's own failure to control crime. Consistent with this approach, she initiated a "quick fix" program to address the city's ills by reducing the number of properties with underwater mortgages. Richmond was the first city in the country to attempt to purchase mortgages at their "fair market value," (always less than the debt remaining), to effectively "dewater" them. As Mayor McLaughlin explained the program in a television interview, the city first attempts to negotiate the voluntary sale of the mortgages at their discounted fair market value. If the banks are not willing to accept that arrangement, the city "will be considering eminent domain."[18] In the summer of 2013, Richmond began its program by asking more than 620 holders of underwater mortgages to sell the loans at a discount to the city, which would in turn refinance the loans in line with the current value of the homes.[19]

Richmond engaged Mortgage Resolution Partners to assist in this undertaking. Mortgage Resolution Partners describes itself as "a Community Advisory firm working to stabilize local housing markets and economies by keeping as many homeowners with underwater mortgages in their homes as possible."[20] The company has come up with an acronym for helping communities use their power of eminent domain to acquire underwater mortgage loans: "CARES," which stands for Community Action to

[14] Carolyn Said, *Pricey homes in Richmond's eminent domain plan*, S.F. CHRON. (Aug. 20, 2013, 4:56 PM), http://www.sfgate.com/business/article/Pricey-homes-in-Richmond-s-eminent-domain-plan-4745146.php.

[15] Megan Gibson, What's the Most Dangerous City in America?, TIME (Nov. 22, 2010), http://newsfeed.time.com/2010/11/22/whats-the-most-dangerous-city-in-america/.

[16] *Crime rate in Richmond, California (CA)*, CITY-DATA.COM, http://www.city-data.com/crime/crime-Richmond-California.html.

[17] *Id.*

[18] DEMOCRACY NOW, McLaughlin Interview, *supra* note 7.

[19] *See* Complaint for Declaratory and Injunctive Relief, Wells Fargo Bank, National Association et al. v. City of Richmond et al., No. CV-13-3663-CRB (N.D. Cal. Aug. 7, 2013), *available at* http://www.inversecondemnation.com/files/2013-08-07filedrichmondcomplaint.pdf [hereinafter Complaint, Wells Fargo v. City of Richmond].

[20] *See* MORTGAGE RESOLUTION PARTNERS, http://mortgageresolution.com (not to be confused with the Mortgage Resolution Fund, http://mortgageresolutionfund.org/).

Restore Equity and Stability. Mortgage Resolution Partners is reportedly consulting with at least three other municipalities in California and is in discussions with a dozen or more others in the state.[21]

In mid-September 2013, the Richmond City Council declined to stop the plan, after which the mayor pressed forward. According to Mayor McLaughlin, "Our residents have been badly harmed by this housing crisis. The banks have been unwilling or unable to fix this situation, so the city is stepping in to provide a fix."[22] The mayor encouraged other cities to follow Richmond's lead.[23]

In 2013, North Las Vegas, Nevada, adopted a similar plan with the help of Mortgage Resolution Partners, under which as many as 5,000 mortgages in North Las Vegas might have qualified. But before the plan could be implemented, a local taxpayer sued, claiming violations of the U.S. and Nevada State Constitutions.[24] The lawsuit alleged that the use of eminent domain to take underwater mortgages from lenders exceeded both Nevada state constitutional authority and the state's eminent domain enabling statutes. It also claimed that using eminent domain in this way would violate the Contracts, Commerce and Due Process Clauses of the U.S. Constitution. North Las Vegas quickly capitulated; the city council voted 5-0 to reject the plan. One of the council members keenly observed: "They want the performing mortgages they assume will default two, three, four years down the road. That's a mighty big assumption with property values climbing,"[25]

In Richmond, the targeted mortgages are those held by out-of-state securitized bonds—residential mortgage-backed securitization (RMBS) trusts.[26] Two complaints challenging the program were filed concurrently in federal court; one by Wells Fargo and several of the mortgage holders on behalf of their trusts, and the other by BNY Mellon on behalf of its trust.[27] A federal district court dismissed the claims as

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[21] Alejandro Lazo, *Eminent domain proposal for mortgages gains traction in California*, L.A. TIMES (Aug. 6, 2013) http://articles.latimes.com/2013/aug/06/business/la-fi-0807-eminent-domain-20130807.

[22] Alison Vekshin, *Richmond, California, Advances Mortgage Reduction Plan*, BLOOMBERG (Sept. 11, 2013, 1:28 PM), http://www.bloomberg.com/news/2013-09-11/richmond-california-advances-mortgage-reduction-plan.html.

[23] *California city OKs plan to seize underwater mortgages using eminent domain*, NBC (Sept. 11, 2013, 11 AM), http://tinyurl.com/lwo8a2r.

[24] Kerri Ann Panchuk, *North Las Vegas eminent domain proposal faces pushback from homeowner*, HOUSINGWIRE (July 1, 2013, 5:41 PM), http://tinyurl.com/kmdh6jr; Jon Ralston, *Federal lawsuit filed to block eminent domain scheme in North Las Vegas*, RALSTON REPORTS (June 28, 2013, 4:52 PM), http://www.ralstonreports.com/blog/federal-lawsuit-filed-block-eminent-domain-scheme-north-las-vegas. A PDF of the filed complaint is available at http://cdn.ralstonreports.com/sites/ default/files/NLVsuit.pdf.

[25] Jim Christie, *Nevada city rejects eminent domain plan for mortgages*, REUTERS (Sept. 5, 2013, 1:28 AM), http://www.reuters.com/article/2013/09/05/us-northlasvegas-eminentdomain-idUSBRE98406B20130905.

[26] For details, see Bethany C.K. Ace, *Guest Post: More On The Two Federal Lawsuits Challenging The Underwater Mortgage Taking Scheme*, INVERSE CONDEMNATION (Aug. 12, 2013), http://tinyurl.com/mm7h2tp.

[27] *See* Complaint, Wells Fargo v. City of Richmond, *supra* note 15; Amended Complaint for Declaratory and Injunctive Relief, Bank of New York Mellon v. City of Richmond, No. 3:13-CV-3664-JCS (N.D. Cal. Aug. 9, 2013), *available at* http://www.sifma.org/uploadedfiles/issues/capital_markets/securitization/eminent_domain/bnym-file-stamped-complaint-supporting-documents.pdf.

unripe on September 16, 2013,[28] but the dismissals were appealed to the Ninth Circuit.[29] Other cities were urged to delay initiating similar programs while the Richmond cases were pending. Vincent A. Fiorillo, president of the board of the Association of Mortgage Investors and a portfolio manager at DoubleLine, stated: "We now have a test case. Richmond, Calif., is going to go out there and try and do this. There is no reason for anybody to do anything until we see how it plays out."[30]

The lender trustees brought the actions after they received offers for the voluntary sale of the mortgages below their value. Importantly, most of the mortgages were not in default or foreclosure and are still performing, so arguably they had an increment of value above the value of the real estate securing the loan. As one might expect, the trustees argued that their mortgages are worth more than what they are being offered and that the offers for voluntary negotiation are illusory because mortgages in the private RMBS trusts are essentially pooled packages of financial agreements and thus could not be sold.[31]

Both lawsuits focused on the issue of whether using eminent domain to take property from a private owner (the RMBS trust) for the benefit of private, individual homeowners is a "public use" justifying a government taking under the Fifth Amendment. The last time this issue reached the U.S. Supreme Court was in 2005, in the case of the taking of Susette Kelo's little pink house in New London, Connecticut, for a private redevelopment project (which, incidentally, was never built).[32] Although the government won that battle, many critics believe that it lost the war because, while *Kelo v. City of New London* did not change the law, the case galvanized broad-based public opposition against the use of the power of eminent domain.

The test cases are over and the district court decision stands because, on May 21, 2014, the Ninth Circuit granted the appellants' (the banks') joint motions to dismiss the appeals.[33] The banks filed their motions to dismiss three days before their opening briefs were due. It remains important, however, to understand the banks' claims so as to be better able to assess similar claims in the future. At the same time, one can speculate as to why the banks abandoned their appeals. Did they reassess their positions and determine they would lose on the ripeness issue? Did they look at the experience over the nine months since they initiated their actions and conclude, based on the recovery from the recession and the lack of interest among local governments in using eminent domain to take mortgages, that there was no real threat? Or—least likely—did they decide not to waste time and money on the appeal, and wait until they are more certain their claims would be found ripe?

As suggested earlier, the central issue in these cases and likely that of any future challenges to this use of eminent domain is valuation. Anthony DellaPelle and Cory Kestner, in their insightful and comprehensive analysis, "Underwater Mortgages: Can Eminent Domain Bail Them Out?," describe the

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[28] Order Granting Defendants' Motion to Dismiss and Denying Plaintiffs' Motion for a Preliminary Injunction, Wells Fargo Bank, National Association, et al. v. City of Richmond, No. C 13-03663 CRB (N.D. Cal. Sept. 16, 2013), *available at* http://www.chamberlitigation.com/sites/default/files/cases/files/2013/Order%20Granting%20MTD%20--%20Wells%20Fargo%20v.%20Richmond%20%28U.S.%20District%20Court%20-%20ND%20California%29.pdf.

[29] Wells Fargo Bank, National Association, et al. v. City of Richmond et al., No. 13-17080 (9th Cir. Oct. 17, 2013); Bank of New York Mellon v. City of Richmond et al., No. 13-17505 (9th Cir. Dec. 10, 2013).

[30] Lazo, *supra* note 19.

[31] Complaint, Wells Fargo v. City of Richmond, *supra* note 15; Complaint for Declaratory and Injunctive Relief, Bank of New York Mellon v. City of Richmond et al., No. CV-13-3664-JCS, *available at* http://tinyurl.com/k5n7k3e.

[32] Kelo v. City of New London, 545 U.S. 569 (2005).

[33] Wells Fargo Bank, National Association, et al. v. City of Richmond et al., No. 13-17080 (9th Cir. May 21, 2014); Bank of New York Mellon v. City of Richmond et al., No. 13-17505 (9th Cir. May 21, 2014).

valuation problems as "perhaps more troubling" than any of the other issues.[34] What is a performing underwater mortgage really worth? Is it worth only the value of the real estate securing the mortgage? Or is it worth more because it is performing? What would be the price for a truly arm's-length transaction with ample time for both the seller and the buyer to get to know the market and to negotiate? Think about Rodney and Vicki Conway: given how far underwater their mortgage is, how risky is it really, and how profitable will it be over the balance of the term?

Another thought-provoking analysis, this one replete with mathematical models, charts and graphs, is "Using Eminent Domain to Write-Down Underwater Mortgages: An Economic Analysis," by Thomas J. Miceli and Catherine A. Pancak, an economist and real estate lawyer, respectively, at the University of Connecticut.[35] The authors conclude that programs using eminent domain to refinance underwater mortgages fail to recognize that some owners of underwater mortgages value their homes and their credit enough that they will continue to pay, and would not otherwise attempt to get relief from their situation of negative equity. The consequence is that taking all of these underwater mortgages—not just those that would default—will raise the default rate, and, "given market value compensation for taken loans, lenders would have to increase interest rates in the future to maintain a competitive return. This would have a contractionary effect on mortgage markets."[36] In short, others will pay the cost in reduced availability of mortgage loans and increased interest rates.

In addition to the legal issue of whether this is a public use (many think the Supreme Court is itching to have another look at that question in light of the blowback from *Kelo*), and Richmond's untenable position that the value of the mortgage equates to the fair market value of the security, there are other meritorious arguments.[37] For one, these trusts are pooled agreements involving properties all over the

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[34] Anthony F. DellaPelle & Cory K. Kestner, *Underwater Mortgages: Can Eminent Domain Bail Them Out?*, Counselors of Real Estate, 38 Real Estate Issues 42 (Nov. 2013), *available at* http://www.cre.org/memberdata/pdfs/underwater.pdf. A recent adaptation of this article focusing on a proposal in Newark, New Jersey, is Anthony F. DellaPelle, *Eminent Domain and Underwater Mortgages: Is the Concept Still Afloat?*, NEW JERSEY L.J. (Mar. 18, 2015) *available at* http://www.njlawjournal.com/id=1202720914137 ("The use of government's awesome power of eminent domain to take underwater mortgages is wrought with complications, does not appear likely to lead to any significant chance of furthering any legitimate 'public' purpose, and may cause more problems than it will remedy. Instead, lengthy and expensive legal battles are all but certain to follow, as will disruptions to and changes in the credit industry, which may cause decreased access to capital by borrowers and to higher interest rates. With these legal uncertainties and potential economic ramifications, actions or options other than using eminent domain need to be considered.").

[35] Thomas J. Miceli & Catherine A. Pancak, *Using Eminent Domain to Write-Down Underwater Mortgages: An Economic Analysis*, University of Connecticut Department of Economics Working Paper Series, Working Paper 2013-05 (Mar. 2013), *available at* http://www.ccimef.org/pdf/2013-133.USING-EMINENT-DOMAIN-TO-WRITE-DOWN-UNDERWATER-MORTGAGES-AN-ECONOMIC-%20ANALYSIS.March-2013.pdf.

[36] Thomas J. Miceli & Catherine A. Pancak, *Using Eminent Domain to Write-Down Underwater Mortgages: An Economic Analysis, University of Connecticut Department of Economics Working Paper Series*, Working Paper 2013-05 (Mar. 2013), 20. The potentially adverse effects on the secondary mortgage market are noted in Brandon Boxbaum, *Public Muscle and Private Profit: A Flawed Scheme for Stemming Foreclosures Through the Power of Eminent Domain*, 83 GEO. WASH. L. REV. 209 (2014). ("This scheme would do more harm than good. The intrusion into the secondary mortgage market would drive away investors, drying up a major source of liquidity for the individual lenders who originate the loans and provide access to housing.").

[37] See Richard A. Epstein, *Richmond's Mortgage Heist*, DEFINING IDEAS (Aug. 13, 2013), http://www.hoover.org/publications/defining-ideas/article/153896.

country; would Richmond have the power of eminent domain in, for example, Idaho Falls? Another issue implicates the "dormant" Commerce Clause: can Richmond burden interstate commerce? In addition to the legal issues, attorneys' fees add substantial transaction costs.

Perhaps more important than the legal issues and the economics of using eminent domain in this way is the residential market. The California housing market is afire, up 28 percent in the summer of 2013 and remaining strong, with a 22.1 percent increase year-over-year through December 2013 and 22 consecutive months of rising median sales prices.[38] The Bay Area year-over-year change in median home prices has been positive since the spring of 2012, climbing to over 30 percent year-over-year through virtually all of 2013, but with increases now softening considerably into a more sustainable range of 10 percent or so.[39] Listing prices in Richmond continued their steady rise through February 2015, up 7 percent year-over-year.[40] In February 2015, year-over-year sale prices in Richmond were up 20.9 percent, from $215,000 to $260,000.[41] In Richmond, "distressed properties"—those that are bank-owned, real estate-owned, or in foreclosure or short sales—are down to 7 percent as against 17 percent a year ago and 23 percent a year-and-a-half ago. If those numbers remain steady, the problem will be soon be over and the interest in using eminent domain to take underwater mortgages will fade away.

The use of eminent domain for this purpose has its supporters, including the left-leaning organization Demos, which describes itself as "a public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy."[42] A senior fellow at Demos says, "Just as redistricting and gerrymandering are battles between urban ex-urban political interests, the devastation of cities from the Great Recession provides an opportunity to realign political power. The eminent domain procedure addresses the real problem, fixing the local economy, and should be the way forward."[43]

Still, the mortgage "crisis" is no longer really a crisis in many areas. San Bernardino County, California, and the cities of Fontana and Ontario, California, rejected Mortgage Resolution Partners' overtures simply because things are getting better. By the end of June 2013, housing prices in that area were up 31 percent, to an average of $262,000. Is the foreclosure crisis over?[44] No, but it is fading fast. Nationally, foreclosures were down 44 percent in August 2013 over the preceding year and are continuing to decline, with 19 percent fewer in the 12-month period ending January 2014.[45] Remarkably, the January

[38] *Prices bouncing back for California housing market*, VENTURA COUNTY STAR (July 23, 2013, 10:22 AM), http://www.vcstar.com/news/2013/jul/23/prices-bouncing-back-for-california-housing/; *California December Home Sales*, DQNEWS.COM, Jan. 15, 2014, *available at* http://www.dqnews.com/Articles/2014/News/California/RRCA140115.aspx.

[39] DQNews Weekly National Home Sales (Mar. 29, 2015) http://www.dqnews.com/ (last visited Mar. 29, 2015).

[40] *See* Richmond, CA Real Estate Trends, MOVOTO, http://www.movoto.com/richmond-ca/market-trends/ (last visited Mar. 29, 2015).

[41] DQNews California Homes Sale Activity by City – Homes Sales Recorded February 2015 http://www.dqnews.com/Charts/Monthly-Charts/CA-City-Charts/ZIPCAR.aspx (last visited Mar. 29, 2015).

[42] *About Demos*, DEMOS, http://www.demos.org.

[43] Wallace Turbeville, *Eminent Domain and Underwater Mortgages: Solving the Municipal Fiscal Crisis*, YAHOO! FINANCE (Aug. 7, 2013, 2:31 PM), http://tinyurl.com/n7h6pnn.

[44] Richard Davies, *Foreclosure Crisis Fading Fast*, ABCNEWS.COM (Sept. 12, 2013, 8:03 AM), http://abcnews.go.com/blogs/business/2013/09/foreclosure-crisis-fading-fast/.

[45] *See National Foreclosure Report*, CORELOGIC, *available at* http://tinyurl.com/p3qvjee (last visited April 14, 2014).

2015 national foreclosure inventory is down 33.2 percent year-over-year.[46] Darren Blomquist, of the listings firm RealtyTrac, says that "The overall picture is we're on a path back to normal foreclosure activity. We're really over two-thirds on the way there."[47] Nonetheless, a curious counterintuitive effect seems to be occurring: banks are doing more foreclosures. Why? According to Blomquist, "That actually I believe is a function of the recovering market. The banks now feel more comfortable foreclosing because home prices are higher."[48]

Mortgage Resolution Partners continues to market its concept, but there is evidence that the company is losing what little traction it had. The company's website features dozens of articles posted in 2012 and dozens more in 2013, but just three in 2014 (the last on February 26, 2014) and none in 2015.[49] Things got quiet fast. Though now concluded, the Wells Fargo and BNY Mellon cases remain relevant. "Ripeness" is often self-curing with the passage of time and actions by others (including the further implementation of the plan), so the Richmond matter is not over. Although North Las Vegas officials abandoned their plan to use eminent domain, others are still considering such plans. In March 2014, the Township of Irvington, New Jersey, Municipal Council voted 6-1 to approve a resolution to move forward with using eminent domain to acquire underwater mortgages, directing the Planning Board to identify properties "in potential foreclosure that may be designated as areas in need of redevelopment."[50]

In the words of the economist Milton Friedman, "[t]he government solution to a problem is usually as bad as the problem."[51]

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[46] CoreLogic Report January 2015 National Foreclosure Inventory down 33.2% Year Over Year http://www.multivu.com/players/English/71280530-corelogic-jan-foreclosures-down/ (last visited Mar. 29. 2015).

[47] Davies, *supra* note 35.

[48] *Id.*

[49] Mortgage Resolution Partners http://mortgageresolution.com/press-room-0 (last visited Mar. 29, 2015).

[50] Eunice Lee, *Irvington moves a step closer to using eminent domain to fight foreclosures*, STAR-LEDGER (New Jersey), (Mar. 30, 2014, 8:55 AM), http://www.nj.com/essex/index.ssf/2014/03/irvington_moves_a_step_closer_to_using_power_of_eminent_domain_to_stem_foreclosure_crisis.html.

[51] MILTON FRIEDMAN, THERE'S NO SUCH THING AS A FREE LUNCH 6 (1975).