



April 18, 2013

Via Electronic and Overnight Delivery

The Honorable Shari L. Buck
 The Honorable Robert L. Eliason
 The Honorable Anita G. Wood
 The Honorable Pamela A. Goynes-Brown
 The Honorable Wade W. Wagner
 City of North Las Vegas
 2250 Las Vegas Boulevard North
 North Las Vegas, Nevada 89030

RE: Use of Eminent Domain to Acquire Underwater Mortgages

Dear Mayor Buck and Councilmembers Eliason, Wood, Goynes-Brown, and Wagner:

We understand that the City of North Las Vegas is considering entering into an Advisory Services Agreement with Mortgage Resolution Partners (MRP) and that this draft agreement envisions using the City’s eminent domain power to acquire certain underwater mortgage loans held by private-label mortgage-backed securities (PLS).

The twenty-one organizations listed below are writing to let you know that we strongly oppose the MRP proposal for several reasons. First, we believe that it raises very serious legal and constitutional issues. No jurisdiction has ever used eminent domain to acquire underwater mortgages in securitized pools. Such a novel use of the eminent domain powers is unprecedented and would, in our view, not survive the legal challenges that would ensue.

Under both the 5th Amendment of the U.S. Constitution and Nevada law, eminent domain powers can only be exercised when the proposed taking is for a public use or benefit and when just compensation has been provided to the former owner of the property. The MRP proposal does not satisfy either requirement. The proposal targets a small percentage of North Las Vegas loans that

are in private-label securities and then narrows this group further to focus on those who are current on their existing mortgages, have good credit, and ideally don't have existing home equity loans or other liens on the property. While the small group of people that satisfy these criteria would initially appear to be helped, this help comes at the substantial expense of the entire North Las Vegas community and other potential mortgage borrowers across the country and does not satisfy the public use requirement.

In addition, the proposal would substantially undervalue the existing owners' holdings. In our view, fair compensation has not been provided when the amount of compensation being contemplated is well below the face value of the taken note, when it does not reflect the diminution in the value of the overall investment, and when the amount paid to investors is substantially lower than the amount the mortgage is refinanced for shortly thereafter, with much of the additional funding going to MRP and its funders.

Furthermore, as a result of voter initiatives in 2006 and 2008, the Nevada Constitution contains additional restrictions on eminent domain power that the City of North Las Vegas must comply with. Among other things, eminent domain cannot be used to directly or indirectly transfer property from one private party to another, the property must be valued at its highest and best use, and compensation must monetarily place the property owner in the same position as if the property had never been taken. The MRP proposal is a private party to private party transfer, does not fully value the performing loans that would be taken, does not leave the PLS investor in the same position, and does not provide a benefit to the public as a whole.

Moreover, the mortgage note is typically held by the PLS trustee who is often domiciled outside of Nevada. A City's eminent domain authority does not extend beyond the City's borders; it certainly doesn't apply outside the state. We therefore believe that any Nevada municipality that seeks to use eminent domain in this highly unusual way will face years of costly litigation brought by multiple litigants who, because of fiduciary and other obligations, are forced to sue to protect the assets of their investors.

In addition to the legal issues, the use of eminent domain will also be immensely destructive to US mortgage markets in general and to specific communities using eminent domain, in particular. If the sanctity of the contractual relationship between a borrower and a creditor is undermined by eminent domain, both lenders and investors will be reluctant to provide future funding. The result will be a significant contraction of credit availability, particularly in eminent domain communities. It will be much harder to get a loan, and any loan that is granted will likely come with much stronger credit scores, higher interest rates and larger down payments. This in turn could actually serve to further depress housing values in the City.

We also want to make you aware of who invests in private label mortgage-backed securities and who is therefore harmed if these mortgages are taken by eminent domain. More than a third of the approximately \$1.3 trillion currently held in PLS is held in pension plans, annuities and other insurance products, and mutual funds. Thus, the PLS losses are suffered not by large institutions but by every day savers and investors who have these investments in their pension and 401k plans, their college savings plans and their individual investment portfolios. Fannie Mae, Freddie Mac and the Federal Home Loan Board also own hundreds of billions of dollars of PLS. The Federal Housing Finance Agency (FHFA), which is the conservator of Fannie Mae and Freddie Mac and the regulator of Federal Home Loan Banks, has expressly stated that "action may be necessary on its

part to avoid a risk to safe and sound operations at its regulated entities and to avoid taxpayer expense.”

We recognize the City’s intention to assist homeowners who are facing financial difficulties. We, however, believe that using the power of eminent domain to abrogate a contractual agreement between borrower and creditor would have far greater and lasting negative effects on existing and future North Las Vegas homeowners and on Main Street investors from North Las Vegas and elsewhere.

We thank you for your time and consideration. Please do not hesitate to contact any of our organizations for more information or further discussion.

Thank you.

Sincerely,

Securities Industry and Financial Markets Association
American Bankers Association
American Council of Life Insurers
American Land Title Association
American Securitization Forum
Asian Real Estate Association of America
Association of Financial Guaranty Insurers
Association of Mortgage Investors
Consumer Mortgage Coalition
Greater Las Vegas Association of Realtors
Investment Company Institute
Mortgage Bankers Association
National Association of Hispanic Real Estate Professionals, Nevada Chapter
National Association of Home Builders
National Association of Real Estate Brokers, Las Vegas Chapter
Nevada Association of Realtors
Nevada Bankers Association
Nevada Land Title Association
Nevada Mortgage Bankers Association
The Financial Services Roundtable
The Housing Policy Council of The Financial Services Roundtable

Cc: John Lee, Mayor-Elect
Timothy R. Hacker, City Manager
Jeffrey F. Barr, City Attorney