

From: Tom Deutsch <(b)(6)@americansecuritization.com>
Sent: Friday, July 13, 2012 11:06 AM
To: Pollard, Alfred
Subject: FW: ASF Tells San Bernardino County Eminent Domain Seizures are Bad Policy & Legally Unconstitutional

From: ASF Staff [mailto:asfstaff@americansecuritization.com]
Sent: Friday, July 13, 2012 10:42 AM
To: Tom Deutsch
Subject: ASF Tells San Bernardino County Eminent Domain Seizures are Bad Policy & Legally Unconstitutional

TO: Securitization Market Participants

FROM: ASF Staff

DATE: July 13, 2012

RE: **ASF Tells San Bernardino County Eminent Domain Seizures are Bad Policy & Legally Unconstitutional**

Today, ASF submitted a detailed letter to the Board of Supervisors of the County of San Bernardino, California (the "County") and to the County's CEO and Counsel containing a comprehensive policy and legal discussion of the proposed use of eminent domain to seize certain residential mortgage loans from private-label securitization trusts as a means of fulfilling the stated policy goals of the Homeownership Protection Program. The letter concludes that the use of eminent domain as contemplated not only undermines the County's stated policy goal of supporting distressed borrowers, but also violates both the United States and California Constitutions.

Mark Haddad, David Carpenter, and R.J. Carlson of Sidley Austin LLP served as outside counsel in the development of our letter.

Please click [here](#) for the letter.

The letter is also featured in this morning's Financial Times on page 17, which may be found [here](#) (free registration required to access the article).

Last month, the County and the cities of Ontario and Fontana located therein entered into a Joint Exercise of Powers Agreement (the "Agreement"), forming the Joint Powers Authority (the "JPA"). The JPA is tasked with implementing the "Homeownership Protection Program" (the "Program"), which seeks to "assist in preserving home ownership and occupancy for homeowners with negative equity within the Parties' jurisdictions, avoid the negative impacts of underwater loans and further foreclosures, and enhance the economic vitality and the health of

their communities.” Please click [here](#) for the Agreement.

The letter addresses the proposal that the JPA is considering, which was brought forward by, and primarily benefits, a private entity called Mortgage Resolution Partners (“MRP”). The MRP plan proposes that the JPA seize certain MRP-targeted mortgage loans that are underwater but performing at “fair market value” through the use of eminent domain. MRP would then “manage” the loans on behalf of the municipalities by refinancing them with Federal Housing Administration (“FHA”) insurance and then selling them for substantial profit as whole loans or through new securitizations. Please click [here](#) for a list of FAQs from MRP and [here](#) for an MRP presentation about the Program.

The letter outlines ASF’s strong opposition to the MRP proposal and the use of eminent domain as contemplated therein. Detailing the policy weaknesses and legal infirmities of the proposal, the letter concludes that the plan would hurt credit availability in the County, damage pension funds and mutual funds that own mortgage securities, provide little, if any, assistance to homeowners in distress, hurt property taxes and violate both the U.S. and California Constitutions, as well as incur substantial legal costs and delays for a County in significant financial distress. The letter also notably questions whether the motivations of MRP and the constituent members of the JPA are truly aligned.

Importantly, ASF states in our letter to County officials our willingness to work with the JPA to explore alternative ways in which the Program could be crafted so that the JPA can participate in and foster market-based solutions to the current housing woes.

Initial JPA Meeting

The JPA will hold its first meeting TODAY at 9 AM (PT)/12 PM (ET). The meeting will be strictly organizational in nature and there is no agenda discussion on any of the various Program proposals (such as the use of eminent domain) that the JPA may eventually examine. While public comment will be allowed, California law precludes the JPA from discussing or taking action on anything not posted on the agenda.

Please click [here](#) for the agenda and [here](#) for more information about the meeting, where a live webcast will be made available.

ASF Advocacy

ASF staff have been monitoring the development of the JPA since it became known that the JPA would consider the use of eminent domain early last month. More information on our advocacy regarding this issue may be found below.

On June 28, ASF and a number of other industry trade associations submitted a letter to the County Board of Supervisors expressing strong opposition to the Agreement forming the JPA, which bestows upon the JPA the authority to use eminent domain as contemplated above. The letter explains that the potential use of eminent domain to seize mortgage loans may raise serious legal and constitutional issues, and that credit availability for home purchases and refinancing in

the affected areas could be significantly compromised. Please click [here](#) for the letter.

According to the Agreement, “the Program may include the Authority’s acquisition of underwater residential mortgage loans by voluntary purchase or eminent domain and the restructuring of these loans to allow homeowners to continue to own and occupy their homes.” After using eminent domain to purchase loans for fair market value, the JPA could modify, restructure, hypothecate, assign, pledge, securitize, convey, or reconvey these loans and deeds of trust. However, the Agreement stipulates that the JPA may consider any of a number of options to achieve its mission. The JPA has indicated it will put out a request for proposals in the coming months to solicit ideas from interested parties.

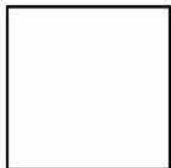
The San Bernardino County Board of Supervisors previously approved the Agreement on April 10, 2012; however, while the City Councils of both Ontario and Fontana have taken actions approving entering into the Agreement, the City of Hesperia, which was included in the initial Agreement, has not. Therefore, the Board of Supervisors approved an amended Agreement on June 19, 2012 allowing the three jurisdictions to move forward, while allowing other jurisdictions to join the Agreement at a later time. Please click [here](#) for the adopted resolution, [here](#) for the Record of Action, and [here](#) for more information on the June 19, 2012 San Bernardino County Board of Supervisors meeting.

Please click [here](#) for a paper by Robert Hockett, Professor at Cornell Law School, advocating the use of eminent domain to acquire and modify mortgages, [here](#) for a July 10, 2012 op-ed by Joe Nocera of the New York Times supporting the program, and [here](#) for a June 23, 2012 editorial by Robert Shiller published in the New York Times, also supporting the program.

Please contact Tom Deutsch, ASF Executive Director, at [\(b\)\(6\)@americansecuritization.com](mailto:(b)(6)@americansecuritization.com) or at [\(b\)\(6\)](mailto:(b)(6)) with any questions that you may have.

Thank you.

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