HUFF POST POLITICS

Wall Street Lobbyists Nervous As Cities Use Eminent Domain to Protect Homeowners

Posted: 07/30/2013 8:58 pm

Usually a community group has to protest in front of a bank, take over a corporate shareholders' meeting, or get arrested at a politicians office or a slumlord's home to make the front page of the *New York Times*.

But on Tuesday, the Home Defenders League - a coalition of community groups who organize homeowners facing foreclosure - made the *Times'* front page simply by using two words: "eminent domain."

Reporter Shaila Dewan's article,"A City Invokes Seizure Laws to Save Homes," described the group's efforts in Richmond, California, where it is working with city officials to help families facing foreclosure and save blighted neighborhoods overrun with foreclosed homes by using its power of eminent domain to purchase mortgages and re-sell them to homeowners at a reduced price.

As the *Times'* story noted, Wall Street lobbyists are waging a legal, political, and ideological war to stop Richmond and other upstart cities from taking control of their own destinies.

Once it hit the *Times*' front page, other media outlets scrambled to catch up on this fascinating David vs. Goliath story. By mid-day - following a conference call with activists, Richmond Mayor Gayle McLaughlin, former Cong. Brad Miller, and others, as well as a press conference in front of Richmond City Hall - the rest of the media had the story, which they posted on their websites.

The headlines on stories posted by the *San Francisco Chronicle* ("Richmond First To Jump Into Eminent Domain") and the *Los Angeles Times* ("Richmond Adopts Eminent Domain Mortgage Plan") were straightforward. The *San Jose Mercury-News* accurately raised the specter of conflict: "Richmond Moves Ahead With Controversial Plan to Seize Underwater Mortgages from Investors."

Business Week's headline was a bit more confrontational: "Richmond Escalates Eminent Domain Plan With Offers to Buy Loans." *American Banker*, the voice of the banking industry, came up with the ominous headline, "Calif. City Threatens to Use Eminent Domain with Underwater Mortgages." Speaking for the conservative wing of the broader business community, *Fortune*'s headline warned readers: "California City's Drastic Foreclosure Remedy: Seizure."

Having read the *New York Times*' story about the situation, the opinion-shapers on the blogosphere quickly weighed in. "A Housing Crisis Solution Sure to Panic Wall Street," opined *Gawker*. "Will Richmond Take Eminent Domain Too Far" asked Alexandra Le Tellier in the *Los Angeles Times*

Slate's Matt Yglesias accepted as gospel the threats of several Wall Street lobby groups to sue cities who pursue this strategy, even though a number of prominent law professors have made the case that cities have a perfect right to do so and that the industry's threats to sue are empty. Thus, the *Slate* headline on Yglesias' opinion piece: "Richmond, Calif.'s Daring Plan to Help Underwater Homeowners Will Provide Massive Stimulus to Law Firms."

What's all the fuss about?

In Richmond, a blue-collar Bay Area city of 103,000 people where home prices have plummeted by 58 percent since the 2007 peak, thousands of homeowners have lost their homes to foreclosure, and about 12,000 families--half of all homeowners with mortgages in the city--are underwater, their homes worth much less than their mortgages.

Groups affiliated with the Home Defenders League have been working with homeowners for several years, trying to get banks to modify their mortgages - called "principal reduction" - so that mortgage payments are in sync with current home values. Many economists, including Joseph Stiglitz and Mark Zandi believe that this is the best solution. If underwater mortgages were reset to fair-market values of homes, it would help homeowners and communities alike, and pump about $102 billion into the economy annually, according to a Home Defenders League report.

But homeowners who have asked banks to restructure their loans typically get a cold shoulder or a bureaucratic runaround. And so far, the Obama administration and Congress have been unwilling to require intransigent banks to reset loans, even though, as Yglesias observed in *Slate*, the administration has made several "head fakes" in that direction.

As a result, cities like Richmond have come upon a local solution - buying the mortgages, resetting the loans, and selling them back to homeowners at the current fair-market price. This week, as Dewan reported in her article, Richmond will send letters to the owners of 626 mortgages asking to buy them at the current market price. If they refuse, the city government will buy the mortgages using its eminent domain powers.

The problem is front-page news in part because Richmond is hardly the only city facing a frenzy of foreclosures and underwater mortgages. Despite rising home prices in some parts of the country, more than 11 million American families--one-fifth of all homeowners with mortgages--are underwater, through no fault of their own. If nothing is done, many will eventually join the more than 5 million American homeowners who have already lost their homes to foreclosure.

A number of other cities - including Seattle, Newark and Irvington, N.J, El Monte, CA, and North Las Vegas - have taken steps to pursue the eminent domain strategy. Many other cities are sure to follow, since there are many "hot spots" where families and cities are drowning in underwater mortgages.

In the 1960s and 1970s, community groups were the ones fighting against the abuse of eminent domain by local governments, who deployed that legal tool to seize homes, raze them, and build office complexes, convention centers, sports stadiums, and luxury housing under the banner of "urban renewal," typically on behalf of big business interests. Back then, activists put their bodies in front of what they called the "federal bulldozer."

Over the past decade, Wall Street didn't have to use bulldozers to destroy homes. They used subprime loans and other risky, reckless and sometimes illegal mortgages, typically charging high interest and excessive fees, mostly targeting working class African American and Latino communities.

Now the same Wall Street players who crashed the economy in the first place are trying to stop local governments from solving the problem.

In her *Times* story, Dewan reported that "Opponents, including the Securities Industry and Financial Markets Association (SIFMA), the American Bankers Association, the National Association of Realtors and some big investors have mounted a concerted opposition campaign on multiple levels, including flying lobbyists to California city halls and pressuring Fannie Mae, Freddie Mac and the Federal Housing Administration to use their control of the mortgage industry to ban the practice."

Tim Cameron, a SIFMA lobbyist, told Dewan that banks would raise the cost of borrowing in cities that deploy the eminent domain strategy.

In April, Cameron and his SIFMA colleague Kim Chamberlain traveled from New York to Richmond to persuade Mayor Gayle McLaughlin and her Council colleagues to back off.

McLaughlin told Dewan: "We're not willing to back down on this. they can put forward as much pressure as they would like but I'm very committed to this program and I'm very committed the well-being of our neighborhoods."

The *San Francisco Chronicle*, which has been covering the discussions in Richmond for months, quoted SIFMA's managing director Chris Killian: "We think it is unconstitutional, illegal and very bad policy, " but didn't quote one of many legal experts - including Cornell university Law Professor Robert Hockett, who first came up with the eminent domain idea - who believe it is eminently legal. Cities routinely use eminent domain to purchase property from private owners for sidewalks, infrastructure, school construction and other projects. Mortgages, legal scholars say, are simply another type of property, and using eminent domain to eliminate blight and restore a city's fiscal health is a longstanding precedent.

The *Chronicle* observed that the city is "[t]aking a controversial plunge into uncharted waters."The paper quoted McLaughlin: "After years of waiting on the banks to offer up a more comprehensive fix or the federal government, we're stepping into the void to make it happen ourselves."

The San Jose *Mercury News* began its story by focusing on the legal question: "Ignoring warnings that the move is illegal and will dry up credit for homebuyers, city leaders and a private investment firm on Tuesday announced they have sent letters threatening to use eminent domain to seize 624 underwater mortgages if lenders don't agree to sell them the loans by Aug. 14."

Several papers quoted McLaughlin's contention that such threats--particularly as part of a coordinated, industry-wide credit boycott -- is another form of lending discrimnation called "redlining." In her *Times* story, Dewan pointed to a letter to the Justice Department from California's Lt. Gov. Gavin Newsom complaining that the opposition was violating antitrust laws and that one unnamed hedge fund had threatened an investor in the project.

Several news stories noted that Wall Street lobby groups persuaded three Republican congressmembers from California to send a letter to Housing and Urban Development Secretary Shaun Donovan, asking HUD to deny FHA financing from mortgages taken by eminent domain. "We are concerned that the proposed use of eminent domain would slow the return of private capital to the housing finance system, and threaten our fragile housing recovery," they wrote Donovan. But none of the stories noted that last year the financial, real estate and insurance industry topped the list of contributors to all three politicians--Gary Miller ($366,000), John Campbell ($484,000), and Ed Royce ($1 million), according to OpenSecrets.org.

A number of reporters expressed skepticism about the role of Mortgage Resolution Partners (MRP), a private firm that is helping cities line up investors to help refinance the loans. But Amy Schur - the campaign director for the Home Defenders League who works with one of its affiliates, The Alliance of Californians for Community Empowerment (ACCE) -- explained that MRP, Richmond's funding partner, has agreed to a set of community-drafted principles to make sure that investors don't exploit desperate cities and homeowners. It has pledged, for example, that the program won't cost taxpayers a dime. MRP will earn a flat fee per mortgage. Homeowners can voluntarily opt out of the program. Schur said that her group will only work with private sector investors who agree to these principles.

During the telephone press conference, several reporters asked why cities needed to use eminent domain to save underwater homeowners because, they said, the housing market is improving on its own and home prices are rising. Sooner or later, they implied, these troubled homeowners will have their heads above water.

In fact, home prices are not rising in the hot spots with high concentrations of underwater mortgages. And where home prices are going up, it is not due primarily to more home purchasers by would-be homeowners, but as a result of purchases of foreclosed properties by real estate speculators who plan to sell their properties as rental properties, as the *Los Angeles Times* reported in March. In other words, even in places where there seems to be a housing "recovery" (judged by housing price figures alone), there isn't really much of a recovery - or increase in homeownership -- at all.

Peter Dreier is E.P. Clapp Distinguished Professor of Politics and chair of the Urban & Environmental Policy Department at Occidental College. He is coauthor of *Place Matters: Metropolitics for the 21st Century* (2005) and author of *The 100 Greatest Americans of the 20th Century: A Social Justice Hall of Fame* (2012)

Follow Peter Dreier on Twitter: www.twitter.com/peterdreier