

## **Policy Briefs: Transfer of Private Rental Housing to Public or Community Control**

Using Eminent Domain to Acquire Private Rental Housing – recent examples  
(updated April 13, 2020)

The King County Housing Authority (KCHA) in Washington State has used eminent domain as part of its affordable housing strategy. Under Washington State law, public housing authorities are authorized to use eminent domain to acquire housing projects within their area of operation.<sup>1</sup> KCHA has used the threat of eminent domain to encourage owners to sell affordable multifamily rental properties to the housing authority.<sup>2</sup> In 2019, the agency followed through on the threat to acquire property through eminent domain. KCHA's Board of Commissioners passed resolutions approving the use of eminent domain to acquire multifamily properties if the housing authority was unsuccessful in negotiating their purchase.<sup>3</sup> The multifamily properties targeted for acquisition were considered to be at high risk of losing affordability, which would result in displacement of residents.<sup>4</sup> In September of 2019, KCHA used eminent domain to acquire 5 properties for \$245 million.<sup>5</sup> These included two Fannie Mae backed multifamily properties.<sup>6</sup>

Gil Cedillo, a member of the Los Angeles City Council, has proposed the use of eminent domain to protect tenants at a complex where affordability restrictions will expire and rents will be raised to market-rate levels. On March 27, the City Council voted to instruct the City Attorney and the Los Angeles Housing and Community Investment Department to issue a report within 30 days on the use of eminent domain.<sup>7</sup>

Eminent domain can also be used to acquire intangible property.<sup>8</sup> The novel idea of using eminent domain to address foreclosures emerged in the early 2010s as a way to address

<sup>1</sup> Wash. Rev. Code §35.82.070 <https://app.leg.wa.gov/RCW/default.aspx?cite=35.82.070>

<sup>2</sup> Jared Brey, *Activists Urge Los Angeles to Use Eminent Domain to Save City's Affordable Housing*, NEXT CITY (Feb. 11, 2020), available at <https://nextcity.org/daily/entry/activists-urge-los-angeles-use-eminent-domain-save-affordable-housing>

<sup>3</sup> The Housing Authority of the County of King, Resolution No. 5625, A Resolution Authorizing Acquisition of Emerson Apartments (June 4, 2019), <https://www.kcha.org/Portals/0/PDF/Board/201906%20KCHA%20Board%20Packet.pdf>; The Housing Authority of the County of King, Resolution No. 5622, A Resolution Authorizing Acquisition of Kendall Ridge Apartments (Mar. 25, 2019), <https://www.kcha.org/Portals/0/PDF/Board/201905%20KCHA%20BOARD%20PACKET%20A.pdf>

<sup>4</sup> *Id.*

<sup>5</sup> *Housing Action Affects Agency Bonds*, (Jan. 17, 2020), <https://www.cmalert.com/search.pl?ARTICLE=187772>

<sup>6</sup> Fannie Mae, Multifamily Properties Purchased Through Eminent Domain, <https://www.fanniemae.com/portal/funding-the-market/mbs/news/2019/multifamily-properties-eminent-domain-100919.html>

<sup>7</sup> <https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=20-0148>

<sup>8</sup> *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 596 (1935)

the foreclosure crisis.<sup>9</sup> Several communities around the country such as Richmond, California seriously explored the feasibility of using eminent domain to seize underwater mortgages, restructure loans to reduce the principal, and then resell the debt to a private buyer.<sup>10</sup> While the idea generated much debate and scholarly discussion<sup>11</sup>, it also created strong backlash from those who owned the mortgages and challenged its constitutionality under the Takings Clause.<sup>12</sup> Congress ultimately passed legislation making it illegal for the federal government to back mortgages seized through eminent domain, effectively ending any possibility of implementation.<sup>13</sup>

<sup>9</sup> See Robert Hockett, “We Don’t Follow, We Lead”: How New York City Will Save Mortgage Loans by Condemning Them, THE YALE LAW JOURNAL FORUM (Nov. 29, 2014), available at [https://www.yalelawjournal.org/pdf/HockettPDF\\_moakg6ig.pdf](https://www.yalelawjournal.org/pdf/HockettPDF_moakg6ig.pdf)

<sup>10</sup> Sarah Thompson, *Eminent Domain for the Seizure of Underwater Mortgages*, 47 U. MICH. J. L. REFORM 22-23 (2013), available at [https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1015&context=mjlr\\_caveat](https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1015&context=mjlr_caveat)

<sup>11</sup> See Ngai Pindell, Nevada’s Residential Real Estate Crisis: Local Governments and the Use of Eminent Domain to Condemn Mortgage Notes, 13 Nev. L. Rev. 888 (2013), available at <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1487&context=nlj>

<sup>12</sup> Robert Rogers, *Banks Sue Richmond to Halt Plan to Seize Mortgages*, SAN JOSE MERCURY NEWS, Aug. 8, 2013, <https://www.mercurynews.com/2013/08/08/banks-sue-richmond-to-halt-plan-to-seize-mortgages/>

<sup>13</sup> <https://www.consumerfinancialserviceswatch.com/2014/12/eminant-enabler-congress-prohibits-hud-and-ginnie-mae-from-facilitating-local-government-seizure-of-mortgage-loans/>