

Page 7-8 from Cal Supreme opinion:

[Yvanova v. New Century Mortgage Corp. :: 2016 :: Supreme Court of California Decisions :: California Case Law :: California Law :: U.S. Law :: Justia](#)

“Defendants emphasize, correctly, that a borrower can generally raise no objection to assignment of the note and deed of trust. A promissory note is a negotiable instrument the lender may sell without notice to the borrower. (*Creative Ventures, LLC v. Jim Ward & Associates* (2011) 195 Cal.App.4th 1430, 1445–1446.) The deed of trust, moreover, is inseparable from the note it secures, and follows it even without a separate assignment. (§2936; *Cockerell v. Title Ins. & Trust Co.* (1954) 42 Cal.2d 284, 291; *U.S. v. Thornburg* (9th Cir. 1996) 82 F.3d 886, 892.) In accordance with this general law, the note and deed of trust in this case provided for their possible assignment. A deed of trust may thus be assigned one or multiple times over the life of the loan it secures. But If the borrower defaults on the loan, only the current beneficiary may direct the trustee to undertake the nonjudicial foreclosure process. “O]nly the ‘true owner’ or ‘beneficial holder’ of a Deed of Trust can bring to completion a nonjudicial foreclosure under California law.” (*Barrionuevo v. Chase Bank, N.A.* (N.D.Cal. 2012) 885 F.Supp.2d 964, 972; see *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1378 [bank and reconveyance company failed to establish they were current beneficiary and trustee, respectively, and therefore failed to show they —had authority to conduct the foreclosure sale]; cf. *U.S. Bank Nat. Assn. v. Ibanez* (Mass. 2011) 941 N.E.2d 40,51 [under Mass. law, only the original

mortgagee or its assignee may conduct nonjudicial foreclosure sale].)In itself, the principle that only the entity currently entitled to enforce a debt may foreclose on the mortgage or deed of trust securing that debt is not, or at least should not be, controversial. “It is a —straightforward application of well-established commercial and real-property law: a party cannot foreclose on a mortgage unless it is the mortgagee (or its agent).” (Levitin, *The Paper Chase: Securitization, Foreclosure, and the Uncertainty of Mortgage Title* (2013) 63 Duke L.J. 637, 640.) Describing the copious litigation arising out of the recent foreclosure crisis, a pair of commentators explained: “While plenty of uncertainty existed, one concept clearly emerged from litigation during the 2008-2012 period: in order to foreclose a mortgage by judicial action, one had to have the right to enforce the debt that the mortgage secured. It is hard to imagine how this notion could be controversial.” (Whitman & Milner, *Foreclosing on Nothing: The Curious Problem of the Deed of Trust Foreclosure Without Entitlement to Enforce the Note* (2013) 66 Ark. L. Rev. 21, 23, fn. omitted.)”