ARTICLE:
SLOW JUSTICE: THE UNFORTUNATE RESULT OF CASE LAW LAGGING STATUTORY CHANGES IN THE RESIDENTIAL FORECLOSURE ARENA

By Karl E. Geier[1]

Two recent decisions of the California Supreme Court, reported in this issue of the *Miller & Starr Real Estate Newsalert*, illustrate both the virtues and the limitations of incremental appellate jurisprudence in a fertile subject of litigation, the California nonjudicial foreclosure process and related one-action and antideficiency laws. In the first decision, *Coker v. JPMorgan Chase Bank, N.A.,*[2] the Court held that a short sale agreement whereby the borrower of a purchase money residential loan acknowledged continuing liability was unenforceable as a purported waiver of Code of Civil Procedure Section 580b, and that the lender therefore could not recover the remaining unpaid amount of the debt after releasing its collateral from the deed of trust without a full payoff in order to accommodate the borrower's request to facilitate the sale. In so holding, the Court relied only on the long history of case law applying the California purchase money protections, and declined to address the impacts of at least two pieces of intervening legislation on short sales and on particular types of residential purchase money loans. In the second decision, *Yvanova v. New Century Mortgage Corporation*,[3] the Court found that a borrower had *standing* to assert that because an assignment of the note and deed of trust by the beneficiary was *void*, the nonjudicial sale of her property constituted a wrongful, i.e., tortious, foreclosure, but the Court declined to rule on whether the borrower could actually *plead* such a cause of action. The *Yvanova* Court also expressly did not apply another statute that became effective only a few weeks after the operative facts of the case arose that would have potentially given the borrower a cause of action based on failure of the foreclosing parties to establish their authority and right to foreclose under the circumstances.

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In both of these cases, the Court's refusal to address the effect of intervening legislation may have been appropriate as a matter of jurisprudence and the limited role of the courts in our legal system, but the result is that both decisions will have only limited relevance in light of the statutory changes. In *Yvanova*, the Court actually sidestepped an opportunity to consider the retroactive effect of the intervening law while resting its decision on prior case law that will essentially be superseded by the statutory changes going forward, while in *Coker* the court simply found the later enactments irrelevant to its analysis of the prior statutory scheme.

This article outlines the statutory changes that were mentioned but not directly applied or construed in these cases, and suggests that the possible effect of these statutes on future foreclosure and short sale situations will be considerably more important than the actual holding in either case.

A. *Coker v. JP Morgan Chase Bank, N.A.* and Amended Code of Civil Procedure Sections 580b and 580e.

The *Coker* decision arose in the context of a standard purchase money mortgage that was used to finance the purchase of the borrower's primary residence, a single family home. (For a more complete summary of the facts and holding of the case, see page 459 of this issue of the *Newsalert*). The loan was made in 2004 and the short sale at issue occurred in 2010. When the loan was made, the operative language of Code of Civil Procedure Section 580b provided that "no deficiency judgment shall lie in any event after a sale of real property or an estate for years therein . . . under a deed of trust or mortgage on a dwelling for not more than four families given to a lender to secure repayment of a loan which was in fact used to pay all or part of the purchase price of that dwelling occupied, entirely or in part, by the purchaser." This language continued unchanged through 2010, when the short sale at issue occurred and the borrower expressly agreed to be liable for the unpaid portion of the debt following the reconveyance. In 2012, after the short sale in this case occurred, Section 580b was amended to expressly provide that "no

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deficiency shall be owed or collected, and no deficiency judgment shall lie," under such a loan. In adopting the 2012 amendment, the Legislature also revised the syntax of Section 580b to eliminate an ambiguity in the statute that some amici argued would directly apply the antideficiency bar following any sale (whether a short sale or a trustee's or foreclosure sale) of such property.

In concluding that the antideficiency bar applied to *any* sale, not solely to a foreclosure or trustee's sale, and therefore precluded the continued liability of the borrower after the sale, the Court began its analysis with an explanation that the construction of the *original* language of Section 580b urged upon the Court by amici had subsequently been adopted by the Legislature in 2012. It then went on to analyze pre-2012 case law extensively to conclude that the correct reading had always been to preclude any deficiency under any circumstances for a purchase money loan, and not to limit the deficiency bar to the foreclosure scenario. As stated by the Court:

> In 2012, the Legislature reformatted section 580b to expressly parse the text in the manner urged by amici curiae. (Stats. 2012, ch. 64, § 1, subd. (a); see Stats. 2014, ch. 71, § 18 [same parsing in current version of the statute].) Chase concedes that the statutory text, when parsed this way, does not limit antideficiency protection to foreclosure sales and bars a purchase money lender from obtaining a deficiency judgment against a defaulting homeowner after a short sale. But Chase argues that the Legislature's decision to reformat the statute in 2012 does not illuminate what section 580b meant at the time of Coker's short sale in 2010. Chase observes that section 580b, as originally enacted in 1933, unambiguously referred to "any sale under a deed of trust" (Stats. 1933, ch. 642, § 5, p. 1673) and that there is no indication the Legislature intended to sever the semantic linkage between 'sale' and 'under a deed of trust' when it amended the statute in 1949 to apply to 'any sale of real property for failure of the purchaser to complete his contract of sale, or under a deed of trust' (Stats. 1949, ch. 1599, § 1, p. 2846).[4]

The Court then continued to examine the prior case law and, not surprisingly, concluded that the previous 63 years of its reported decisions in the area[5] supported the application of the deficiency bar under all circumstances other than the rare instance

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of a "non-standard purchase money transaction" in which the doctrine of *Roseleaf v. Chiereghino*,[6] as later restricted by *Spengler v. Memel,*[7] may sometimes allow a personal judgment against the borrower after the lender's deed of trust is extinguished by a prior sale.[8] According to the court, this prior analysis applied equally to a short sale as to any other type of sale, even though the borrower had requested release of the collateral and agreed to remain liable for the debt, because such agreement constituted an unenforceable and void attempt to "waive" the protections of Section 580b.[9]

Having determined that the operative statute, Code of Civil Procedure Section 580b, as it had been interpreted by the Court itself, had always prohibited the lender's recovery of a deficiency following a short sale, the Court went on to dispose of JPMorgan Chase Bank's arguments that subsequent statutory enactments evidenced a legislative intention that Section 580b not be so applied prior to the amendment. First, the Court noted that despite numerous opportunities to override the courts' "no deficiency following any sale" interpretation of the statute as not requiring a trustee's or foreclosure sale under the purchase money deed of trust itself to trigger the deficiency bar, the Legislature had not done so. Thus, under well-developed principles of interpretation, stated the Court, "[w]hen a statute has been construed by the courts, and the Legislature thereafter reenacts that statute without changing the interpretation put on that statute by the courts, the Legislature is presumed to have been aware of, and acquiesced in, the courts' construction of that statute."[10] Thus, the Court continued, "[a]lthough the Legislature had no occasion to consider short sales in 1933 [when Section 580b initially was enacted] it has since had many occasions to consider—and yet it has never repudiated—the judicially elaborated principles and interpretive approach that lead us to find section 580b equally applicable to short sales and foreclosure sales."[11]

JPMorgan Chase further argued that even if the Legislature's prior actions had not overturned the courts' longstanding interpretation of Section 580b that was now being applied for the

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first time to the unprecedented situation of a short sale, the Legislature's subsequent action in enacting Code of Civil Procedure Section 580e, which for the first time in 2010 (after the *Coker* sale) specifically prohibited the recovery of a deficiency after a short sale, evidenced the Legislature's intent that Section 580b not be so applied. This argument the Court also found wanting, commenting that "whatever the Legislature may have believed about section 580b's applicability to short sales when it enacted 580e cannot dictate the proper construction of section 580b as it stood at the time of Coker's short sale," citing a United States Supreme Court decision[12] for the proposition that "post-enactment legislative history (a contradiction in terms) is not a legitimate tool of statutory interpretation."[13] The Court went on: "Although the Legislature may have believed that henceforth only section 580e and not section 580b would govern short sales, 'a legislative declaration of an existing statute's meaning is neither binding nor conclusive in construing the statute. Ultimately, the interpretation of a statute is an exercise of the judicial power the Constitution assigns to the courts.' "[14]

Thus, without deciding whether or not Section 580e would be retroactively applied to earlier transactions that predated its enactment, the Court avoided dealing with Section 580e at all and rested its decision solely on its own line of decisions interpreting Section 580b. As a result, it expressly did not address other issues that would have been posed if Section 580e applied, such as whether there were conflicts between Section 580b and Section 580e as applied to business entities such as partnerships, corporations, and limited liability companies,[15] or whether the Section 580b protections would override the language of Section 580e that expressly denies protection of a borrower in a short sale from liability for waste (unlike Section 580b, which does provide such protection unless it involves "bad faith waste").[16] The Court did express doubt that a borrower ineligible for antideficiency protection under Section 580e (i.e., a corporation, limited liability company, limited partnership, or political subdivision[17]) could ever claim such protection as an "owner-occupant" purchaser of residential property under Section 580b, due to "the Legislature's

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reenactments of section 580b after it enacted section 580e."[18] However, as with the other issues associated with the interplay between Sections 580b and 580e, the Court concluded: "Our only task is to determine the meaning of section 580b as it stood at the time of Coker's short sale, before section 580e was enacted."[19]

In summary, by accepting *Coker* for a hearing, the Court took the opportunity to reinforce the policy of a former version of Section 580b as it had been interpreted by previous decisions and to extend its application to short sales, while skirting the question of whether and how the case (or others like it) might have been affected by the only statute that will presumably apply to future short sale transactions, i.e., Section 580e. Therefore, while the decision may have some implications for other pending cases that may have arisen before enactment of Section 580e (and may lead some borrowers who have paid or agreed to pay deficiencies after short sales to seek to avoid these liabilities and/or seek to recoup amounts paid from separate funds after a short sale), it will have virtually no bearing on cases that arise in the future under the legislation enacted specifically to address the short sale problem.

B. *Yvanova v. New Century Mortgage Corporation* and the "Prove Your Right to Foreclose" Aspect of the Homeowner Bill of Rights.

The *Yvanova* decision involved another topic on which the Legislature has spoken and that will inevitably be governed by the subsequent legislation rather than by the Court's decision. As noted, *Yvanova*'s narrow holding was that the homeowner borrower had standing to bring a claim for wrongful foreclosure where she could allege that a transfer of the deed of trust and debt was "void" as distinguished from "voidable." In so holding, the Court partially resolved a conflict of decisions in the lower courts of appeal and the federal district courts, most of which had concluded that a homeowner could never bring an action for wrongful foreclosure or to enjoin a foreclosure based on defects in the chain of assignments or credentials and authority of the persons purporting to act for the beneficiary in initiating foreclosure.[20] (For a more complete summary of the facts and

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legal analysis of the *Yvanova* decision, see page 473 of this issue of the *Newsalert*).

In an opinion that primarily addresses the issues of contract law and associated aspects of "standing" to address transfers between third parties of the debt instrument, rather than the specific statutory authority to foreclose and the elements of a wrongful foreclosure action, the California Supreme Court ultimately concluded that it was wrong to grant a demurrer to a post-foreclosure wrongful foreclosure action solely on grounds that the borrower lacked standing. It then sent the case back to the trial court to determine whether, in this case, the borrower could actually plead sufficient facts to make out a claim that the transfer had been "void" or that the foreclosure was somehow "wrongful." While the reasoning and language of the Court may foreshadow the outcome of issues it initially left to be addressed in the lower courts (e.g., suggesting without deciding that if the transfer was alleged to be "void" the borrower need not allege "tender" of the debt as a condition of the action),[21] the Court declined to opine whether a pre-foreclosure action to enjoin wrongful foreclosure as distinguished from a post-foreclosure action for damages could be maintained[22] or whether a post-foreclosure action for quiet title or recovery of the property in lieu of damages would lie for such a wrongful foreclosure after a "void rather than voidable" transfer.[23] Since *Yvanova* is such a narrow decision, and actually disclaims an intention to opine on several more issues other than the narrow issue of standing that it actually does decide, it should come as no surprise that it, like *Coker,* finds it unnecessary to address the effect of an on-point statute that was clearly intended by the Legislature, at least prospectively, to apply to such situations.

The operative facts of *Yvanova* involved a loan made in 2006 and a series of bankruptcies and purported transfers of the beneficiary's interest in the deed of trust and substitutions of trustee executed between 2007 and 2012, followed by a trustee's sale in September 2012 in which the borrower lost her home. During the 2011-2012 legislative session, before the trustee's sale oc-

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curred, the State Legislature enacted the so-called "Homeowner's Bill of Rights,"[24] which among other things includes provisions that prohibit any entity from initiating a foreclosure process "unless it is the holder of the beneficial interest under the mortgage or deed of trust, the original trustee or the substituted trustee under the deed of trust, or the designated agent of the holder of the beneficial interest."[25] It also requires the loan servicer to inform the borrower, before a notice of default is filed, of the borrower's right to request copies of any assignments of the deed of trust "required to demonstrate the right of the mortgage servicer to foreclose;"[26] and requires the servicer to ensure the documentation substantiates the right to foreclose.[27] As the Court noted, the legislative history of these statutes "indicates the addition of these provisions was prompted in part by reports that nonjudicial foreclosure proceedings were being initiated on behalf of companies with no authority to foreclose."[28] However, this legislation, while enacted and signed into law in July 2012, was not enacted as urgency legislation and therefore did not become effective until January 1, 2013, a little over three months after the trustee's sale and only a week after the challenged trustee's deed transferring Yvanova's home to the foreclosure sale purchaser was recorded (December 24, 2012). Since the law did not actually become effective until after the trustee's sale proceedings were completed, the Court declined the borrower's invitation to consider whether the Homeowners Bill of Rights provisions "provide additional support" for its holding that the borrower had standing to assert that the transfer was void in an action for wrongful foreclosure, a holding that it had made "without reference to this legislation."[29]

Yvanova therefore poses the unusual circumstance of a decision that strictly avoids any holding on the substantive law of wrongful foreclosure, confining itself to the issue of standing, despite a statute that had already been in effect for three full years before the Court rendered its decision, which statute is certain to apply to virtually any foreclosure on residential property that occurs after the operative facts of the case arose, and which statute on its face appears dispositive of the "standing" issue as well as the is-

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sue of whether there is a cause of action arising out of a void assignment and what remedies the borrower might have in such cases. Under the referenced legislation, not only is the foreclosing party required to provide evidence of ownership of the debt and authority to foreclose, which would directly bring into question the validity of the transfers of the debt and the actions appointing the agent to foreclose on behalf of the lender, but the issues under the statute also would not necessarily turn on the "void" vs. "voidable" dichotomy that was central to the Court's holding on the standing issue.[30] Moreover, although not mentioned by the Court, the remedial provisions of the Homeowners Bill of Rights include the following, in the words of the California Attorney General:[31]

> **Enforceability:** Borrowers will have authority to seek redress of 'material' violations of the new foreclosure process protections. Injunctive relief will be available prior to a foreclosure sale[32] and recovery of damages will be available following a sale.[33]

As with the *Coker* decision, it is hard to fault the Court for not applying a statute that was not effective at the time the events and circumstances of the case arose, but the probable irrelevance of *Yvanova* to likely future litigation in the area of residential foreclosures illustrates, once again, the downside of the (mostly implied) application of the doctrine of judicial restraint in these cases. Moreover, despite the Attorney General's views on the remedial provisions of the Homeowners Bill of Rights as quoted above, and the participation of the Attorney General's office in the *Yvanova* case as amicus curiae on behalf of the plaintiff (Yvanova), these views also received no attention from the Court in this case. In other cases, the Court has sometimes gone out of its way to articulate the substantive law that should be applied by the trial court on remand,[34] or in cases governed by later legislation, but here there was no such guidance. The *Yvanova* decision therefore stands as a closely reasoned, scholarly, and technically accurate rendition of the law that has virtually no conceivable practical significance for the heavily litigated area to which it applies because of the intervening change in law wrought by the California legislature, while such statutory changes remain essentially unexplored by relevant case law.

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C. Conclusion.

The last eight years of litigation since the home mortgage meltdown and foreclosure crisis of 2008 have witnessed a host of conflicting and sometimes perplexing decisions surrounding the general subjects of wrongful foreclosure claims, the tender rule, the right of borrowers to challenge the credentials and right to foreclose in a nonjudicial foreclosure, the ability of borrowers to obtain pre-foreclosure relief while these issues were resolved, the effect of the federal TARP legislation, the HAMP process for homeowner mortgage relief, the requirements for an effective loan modification or waiver of homeowner defaults, claims to deficiencies and rights to recover from homeowners' other assets, and numerous other related issues and sub-issues.[35] Very few of these cases have risen to the level of the California Supreme Court, and the two that have been decided so far have little chance of lasting significance due to the effect of intervening legislation. Thus, *Yvanova* and *Coker,* both of which superficially may appear borrower friendly, really do more to demonstrate the limitations of judicial power and restraint than to resolve the important legal issues and the public policy and private welfare implications of matters on which the Legislature has already spoken.

ENDNOTES:

[2]*Coker v. JPMorgan Chase Bank, N.A.*, 62 Cal. 4th 667, 197 Cal. Rptr. 3d 131, 364 P.3d 176 (2016).

[3]*Yvanova v. New Century Mortg. Corp.*, 62 Cal. 4th 919, 199 Cal. Rptr. 3d 66, 365 P.3d 845 (2016).

[4]62 Cal. 4th at 675-676.

[5]The first decision was *Brown v. Jensen*, 41 Cal. 2d 193, 259 P.2d 425 (1953), which directly held that a purchase money borrower was protected from a personal judgment for a "deficiency" even when the foreclosure of a senior lien had left the purchase money loan effectively unsecured.

[6]*Roseleaf Corp. v. Chierighino*, 59 Cal. 2d 35, 27 Cal. Rptr. 873, 378 P.2d 97 (1963).

[7]*Spangler v. Memel*, 7 Cal. 3d 603, 102 Cal. Rptr. 807, 498

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P.2d 1055 (1972).

[8]See *Coker v. JP Morgan Chase Bank, N.A.*, 62 Cal. 4th at 680-681.

[9]*Coker v. JP Morgan Chase Bank, N.A.*, 62 Cal. 4th at 686-687.

[10]*Coker v. JP Morgan Chase Bank, N.A.*, 62 Cal. 4th at 688, quoting *People v. Bouzas*, 53 Cal. 3d 467, 475, 279 Cal. Rptr. 847, 807 P.2d 1076 (1991).

[11]*Coker v. JP Morgan Chase Bank, N.A.*, 62 Cal. 4th at 689.

[12]*Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 242, 131 S. Ct. 1068, 179 L. Ed. 2d 1 (2011).

[13]*Coker v. JP Morgan Chase Bank, N.A.*, 62 Cal. 4th at 689-690.

[14]*Coker v. JP Morgan Chase Bank, N.A.*, 62 Cal. 4th at 690, quoting *Western Security Bank v. Superior Court*, 15 Cal. 4th 232, 244, 62 Cal. Rptr. 2d 243, 933 P.2d 507 (1997).

[15]*Coker v. JP Morgan Chase Bank, N.A.*, 62 Cal. 4th at 190. See Code Civ. Proc., § 580e, subd. (d)(1).

[16]*Coker v. JP Morgan Chase Bank, N.A.*, 62 Cal. 4th at 190. See Code Civ. Proc., § 580e, subd. (c). See also *Cornelison v. Kornbluth*, 15 Cal. 3d 590, 594, 596, 604-606, 125 Cal. Rptr. 557, 542 P.2d 981 (1975); *Fait v. New Faze Development, Inc.*, 207 Cal. App. 4th 284, 301-303, 143 Cal. Rptr. 3d 382 (3d Dist. 2012).

[17]Code Civ. Proc., § 580e, subd. (d)(1).

[18]*Coker v. JP Morgan Chase Bank, N.A.*, 62 Cal. 4th at 190-191, citing *Schatz v. Allen Matkins Leck Gamble & Mallory LLP*, 45 Cal. 4th 557, 573, 87 Cal. Rptr. 3d 700, 198 P.3d 1109 (2009), as modified, (Mar. 11, 2009) for the proposition that statutes must be viewed in light of the presumption against implied repeal.

[19]*Coker v. JP Morgan Chase Bank, N.A.*, 62 Cal. 4th at 191.

[20]*Yvanova v. New Century Mortg. Corp.*, 62 Cal. 4th at 929-931. As noted by the Court, in *Glaski v. Bank of America, National Association*, 218 Cal. App. 4th 1079, 160 Cal. Rptr. 3d 449 (5th Dist. 2013), the Fifth District Court of Appeal held that a foreclosed homeowner could challenge an assignment of his or her note and deed of trust if the defect asserted rendered the assignment void, not merely voidable. In *Jenkins v. JP Morgan Chase Bank, N.A.*, 216 Cal. App. 4th 497, 156 Cal. Rptr. 3d 912 (4th Dist. 2013), however, the Fourth District Court of Appeal, held that a plaintiff homeowner's allegations of improprieties in the assignment of the deed of trust were not actionable because, as a third party unrelated to the assignment, she was unaffected by such deficiencies and had no standing to enforce the terms of the agreements that were allegedly violated. Subsequent decisions

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in the federal and state courts largely followed *Jenkins*. E.g., *Gomes v. Countrywide Home Loans, Inc.*, 192 Cal. App. 4th 1149, 121 Cal. Rptr. 3d 819 (4th Dist. 2011); *Herrera v. Federal Nat. Mortg. Assn.*, 205 Cal. App. 4th 1495, 141 Cal. Rptr. 3d 326 (4th Dist. 2012). *See* also *Siliga v. Mortgage Electronic Registration Systems, Inc.*, 219 Cal. App. 4th 75, 85, 161 Cal. Rptr. 3d 500 (2d Dist. 2013); *Fontenot v. Wells Fargo Bank, N.A.*, 198 Cal. App. 4th 256, 264-266, 129 Cal. Rptr. 3d 467 (1st Dist. 2011), both concluding that a borrower in default had no standing to challenge defects in the chain of assignment and could not show prejudice if the borrower was actually in default and the true holder of the note and beneficial interest in the deed of trust could have foreclosed, even if the party initiating the foreclosure was not legally entitled to do so. See 62 Cal. 4th at 929-931.

[21]*Yvanova v. New Century Mortg. Corp.*, 62 Cal. 4th at 929 n.4 ("Tender has been excused when, among other circumstances, the plaintiff alleges the foreclosure deed is facially void, as arguably is the case when the entity that initiated the sale lacked authority to do so," citing *Chavez v. Indymac Mortgage Services*, 219 Cal. App. 4th 1052, 1062, 162 Cal. Rptr. 3d 382 (4th Dist. 2013); *In re Cedano*, 470 B.R. 522, 529-530 (B.A.P. 9th Cir. 2012); *Lester v. J.P. Morgan Chase Bank*, 926 F. Supp. 2d 1081, 1093 (N.D. Cal. 2013); and *Barrionuevo v. Chase Bank, N.A.*, 885 F. Supp. 2d 964, 969-970 (N.D. Cal. 2012)).

[22]*Yvanova v. New Century Mortg. Corp.*, 62 Cal. 4th at 934.

[23]*Yvanova v. New Century Mortg. Corp.*, 62 Cal. 4th at 923-924, 929 n.4.

[24]2012 Stats., chs. 86, 87 (AB 278, SB 900). See 4 Miller & Starr, California Real Estate 4th § 13:185 (2015) for further discussion of the Homeowner Bill of Rights.

[25]Civ. Code, § 2924, subd. (a)(6).

[26]Civ. Code, § 2923.55, subd. (b)(1)(B)(iii).

[27]Civ. Code, § 2924.17, subd. (b).

[28]*Yvanova v. New Century Mortg. Corp.*, 62 Cal. 4th at 941 n. 14. See Sen. Rules Com., Conference Rep. on [Cal.] Sen. Bill No. 900 (2011-2012 Reg. Sess.) as amended June 27, 2012, p. 26.

[29]*Yvanova v. New Century Mortg. Corp.*, 62 Cal. 4th at 941-942. A similar approach was adopted by the court in *Saterbak v. JPMorgan Chase Bank, N.A.*, 245 Cal. App. 4th 808, 199 Cal. Rptr. 3d 790 (4th Dist. 2016), which both (a) denies standing to a borrower in a *pre-foreclosure* action based on an alleged "voidable but not void" defect in assignments, and (b) expressly concludes the Homeowners Bill of Rights was not retroactive.

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[30]Compare *Valbuena v. Ocwen Mortgage Loan Servicing, LLC*, 237 Cal. App.4th 1267 (2nd Dist. 2015) (applying the Homeowners Bill of Rights to uphold borrower's claims for wrongful foreclosure arising out of servicer's violation of "dual tracking" prohibitions of Civ. Code 2923.6, noting that the statute provides for both pre-foreclosure injunctive relief as well as post-foreclosure damages remedies, and finding no requirement of "tender" to maintain a cause of action for violation, rejecting the claim that "tender" case law prior to enactment of the Homeowners Bill of Rights had any bearing on the question); *Valbuena v. Ocwen Loan Servicing, LLC*, 237 Cal. App. 4th 1267, 188 Cal. Rptr. 3d 668 (2d Dist. 2015) (confirming that pre-foreclosure injunctive relief may be amended for violation of the Homeowners Bill of Rights).

[31]California Attorney General website description of the Homeowners Bill of Rights, http://oag.ca.gov/hbor, accessed March 30, 2016 (footnotes added).

[32]Civ. Code, §§ 2924.12, subd. (a), 2924.19, subd. (a).

[33]Civ. Code, §§ 2924.12, subd. (b), 2924.19, subd. (b).

See California Attorney General website description of the Homeowners Bill of Rights, http://oag.ca.gov/hbor, accessed March 30, 2016.

[34]E.g., *Center for Biological Diversity v. California Dept. of Fish and Wildlife*, 62 Cal. 4th 204, 228-229, 195 Cal. Rptr. 3d 247, 361 P.3d 342 (2015).

[35]See Geier, Show Me Your Papers, Sales and Assignments of Secured Real Estate Loans and the California Foreclosure Process, Vol. 19, No. 3, Miller & Starr Real Estate Newsalert (January 2012); 5 Miller & Starr, California Real Estate 4th, Ch. 13, Deeds of Trust and Mortgages, §§ 13:180 to 13:185, 13:254 to 13:256 (4th ed. 2015).

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