

NO NEED TO RECORD AN ASSIGNMENT OF A DEED OF TRUST PRIOR TO FORECLOSURE

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In *Calvo v. HSBC Bank USA*, --- Cal.Rptr.3d ----, 2011 WL 4035791 (Cal.App. 2 Dist. 2011), the California Court of Appeal affirmed the longstanding rule that an assignee of a beneficiary under a deed of trust need not record its beneficial interest prior to initiating foreclosure. In *Calvo*, the plaintiff argued the foreclosure sale of her property was void because HSBC did not record the assignment of the beneficial interest from the original lender to HSBC. She claimed this violated California Civil Code Section 2932.5. Like the lower court, the Court of Appeal found "no merit" to her claims.

In reaching its decision, the Court of Appeal relied on the plain language of Civil Code Section 2932.5. That section requires the recording of a beneficial interest in real property prior to foreclosure only when "the power of sale is given to a mortgagee, or other encumbrancer." Since 1908, however, this requirement applies only to mortgages, not to deeds of trust. Under a deed of trust, title to the encumbered property is transferred to a trustee, who also exercises the power of sale. A mortgage, however, is a lien on real property, title of which remains with the borrower. Over the course of the last century, "deeds of trust have largely replaced mortgages as the primary real property security device." As a result, Section 2932.5 has become "practically obsolete." For these reasons, the plaintiff had no legal basis to set aside the trustee's sale following foreclosure. *Calvo v. HSBC Bank USA*, --- Cal.Rptr.3d ----, 2011 WL 4035791 (Cal.App. 2 Dis. 2011)

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