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## Banks that foreclose without legal authority to do so commit the tort of wrongful foreclosure

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The California Supreme Court held in **Yvanova v. New Century Mortgage Corp.**, 365 P.3d 845 (Cal. 2016), that a borrower has standing to prove that a nonjudicial foreclosure was wrongful because an assignment by which the foreclosing entity purportedly took a beneficial interest was void, thereby depriving the foreclosing party of any authority to foreclose through a trustee's sale.

In a follow up case, **Sciarratta v. U.S. Bank Nat'l Ass'n**, 2016 Cal. App. LEXIS 399 (2016), the Court of Appeals held that foreclosure by an entity with no power to foreclose is, by itself, the tort of wrongful foreclosure. Even if the borrower is in default, and someone has the right to foreclose, that does not mean that any person with a claim can bring the foreclosure. Only a party with a better claim to title -- someone with the legal authority to foreclose -- can oust a peaceable possessor from their home.

"A homeowner who has been foreclosed on by one with no right to do so—by those facts alone—sustains prejudice or harm sufficient to constitute a cause of action for wrongful foreclosure. When a non-debtholder forecloses, a homeowner is harmed by losing her home to an entity with no legal right to take it."

Such a tort can be remedied either by damages or, in appropriate cases, by injunctive relief to undo the foreclosure sale. Damages, according to the court, include all consequential damages, including damages for emotional distress.

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