

PROPERTY PRACTICE QUESTIONS

ANSWER 24

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Caveat: The outline of the answer below provides guidance regarding the main issues which you should address in your answer. The answer is *not* designed to be a model answer.

Helen v. Roger (breach of statutory warranties)

- Under Texas Property Code § 5.023, every time the seller conveys real property, the seller covenants that this property is *free from encumbrances*
 - This covenant need not be expressly stated, it is automatically made by statute
 - A deed of trust is considered to be an encumbrance
- Because Roger sold Helen his house while it was burdened by the deed of trust to Wells Fargo, Roger broke the statutory covenant of “no encumbrances” and is liable to Helen.

Foreclosure on Helen’s home by Wells Fargo

- Deed of trust foreclosure requirements are different from the mortgage foreclosure requirements
 - When the property is subject to a mortgage, the lender needs to go through the court to foreclose
 - When the property is subject to a deed of trust, the lender does not need to go through the court to foreclose. The deed of trust contains the power of sale provision and the trustee can sell the property without going through the court proceedings.

- Because Roger had executed a deed of trust for the benefit of Wells Fargo, Wells Fargo can foreclose without going through the court proceedings.
- The actual foreclosure process for the mortgage and the deed of trust is the same
 - According to Property Code § 51.002, property is usually sold at public auctions which are held on first Tuesday of each month on the courthouse steps between 10 a.m. and 4 p.m.
 - The sale ends the mortgagee's right of redemption which in Texas usually continues for five or six months
- Wells Fargo has a full right to foreclose on the house if Roger does not timely exercise his right of equity of redemption

Jerrod v. Roger (breach of title warranty)

- When property is sold by a warranty deed, the seller makes certain present and future covenants to the buyer
- The **present covenants** are breached if at all at the time of conveyance and they include:
 - ***Covenant of seisin*** (warranty that seller owns the property that he is selling)
 - Not breached, because Roger did in fact own the condo
 - ***Good right to convey***
 - Not breached; there are no facts that would indicate that Roger did not have a good right to convey the condo
 - ***No encumbrances***
 - Not Breached, Roger had no liens or other encumbrances on the condo
- The **future covenants** are breached if the seller does not act when the need arises. These covenants include:
 - ***Covenant of Quiet Enjoyment***
 - The buyer can use the property free of the claims of third parties

- Breached, because Natalie is asserting a claim against Jerrod's title and is threatening to get Jerrod kicked out of the condo
 - *Covenant of Warranty*
 - If someone interferes with the grantee's quiet enjoyment, it is the original grantor's job to defend the buyer
 - Breached because Natalie is interfering with Jerrod's quiet enjoyment of property and Roger has taken no action to defend Jerrod
 - *Covenant of Further Assurances*
 - Grantor promises to do whatever is reasonably necessary to protect the grantee's title (go to court, give testimony, etc.)
 - Probably breached, because Natalie has threatened to sue Jerrod and Roger has not contacted Natalie to clear up this situation
 - It will definitely be breached if Natalie does indeed sue Jerrod and Roger refuses to go to court to testify when necessary
- It is likely that Roger has breached all three future covenants of title warranty that he made to Jerrod
- Jerrod will most likely prevail in his action against Roger