

# PROPERTY PRACTICE QUESTIONS

## QUESTION 24

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**Topic: Real Property**

**Sub-topics: Title Protection**

**Type: Essay**

**Difficulty: Moderate**

**Time: 45 minutes**

In 2002, Roger bought a house for \$150,000 in San Antonio, Texas. To finance his house, Roger obtained a \$130,000 loan from Wells Fargo and granted Wells Fargo a deed of trust, naming Wells Fargo's corporate officer as the trustee for the benefit of Wells Fargo. Roger's loan agreement with Wells Fargo provided that the loan was to be fully repaid by December 2006. It is now September of 2006 and Roger still owes \$110,000 on the house.

To get out from under the house, Roger decided to sell it to his niece Helen, who bought it for \$90,000 in October of 2006. Helen had substantial savings in the bank, so she paid Roger the whole amount with one check and moved in shortly thereafter. Because Helen trusted her uncle Roger, she never asked for a deed at the time she bought the house. Nor did Helen do a title search of any kind.

To maximize his cash flow, Roger also sold his condo in College Station to Jerrod Smith by warranty deed. Jerrod never hired a title company to do a title search and never

made Roger buy title insurance. One month after Jerrod bought the condo, one Natalie showed up on his doorsteps claiming that she had a better title to the condo than Jerrod.

Despite his noble intentions to repay Wells Fargo as soon as possible, Roger took both Helen and Jerrod's money and left for Nevada to try his luck in Las Vegas. Roger, who had a gambling problem, spent all of the \$90,000 that he had received from Helen and all the money he received from Jerrod in casinos. It is now December of 2006 and Wells Fargo has informed Helen that it will foreclose on the house if Roger does not make a full payment in six months. Helen insists that to be able to foreclose, the bank must first obtain a court order. The bank denies a need for a court order.

Meanwhile, Natalie has threatened to sue Jerrod if he does not vacate the condo in 2 weeks. Jerrod is frustrated and thinks that it is Roger's job to be dealing with Natalie's claim, because Roger sold Jerrod the condo under a warranty deed.

Both Helen and Jerrod now sue Roger. Helen claims a breach of statutory warranties and Jerrod claims a breach of express title warranties. What result? Explain your answer fully.