

# Model Answers to the Conveyancing Examination

## May 2006

### Part 1

#### Self-Study Deeds Course

---

#### Question 1 - Model answer

[13]

1.1 The two servitudes will be brought in via the a Power of Attorney to pass transfer.

[3]

1.2 1 Subject to the servitude hereinafter set out imposed by the seller, as a condition of sale:

The portion is subject to a right of way, 3 metres wide, along the entire boundary lettered AB on annexed diagram S.G. No. A123/2006 in favour of the remaining extent of Erf 15 Golden Place Township.

2 Subject to the servitude hereinafter set out imposed by the local authority in its consent to the subdivision of Erf 15 Golden Place Township aforesaid;

The Portion is subject to servitude 2 metres wide, along any two boundaries other than a street boundary in favour of the Local Authority for municipal purposes.

[10]

**Question 2 - Model Answer**

**[30]**

2.1

Prepared by me

CONVEYANCER

Frantzen E

**Application in terms of section 45bis(1)(a)  
of the Deeds Registries Act, 47 of 1937**

We the undersigned,

John Mvula

Identity Number 651212 5095 088

and

Dorris Mvula

Identity Number 670116 0073 082

Married in community of property to each other

hereby declare that

WHEREAS Erf 1234, Kimberley

situate in Sol Plaatjie Municipality, District Kimberley, Northern Cape Province

Measuring: 1000 (one thousand) Square Metres

Held under Deed of Transfer No. T4321/1996

is registered in the name of the said John Mvula and in the name of his former spouse Jackie Buhla (previously Mvula), Identity Number 650917 0008 084;

AND WHEREAS John Mvula

Identity Number 651212 5095 088

Married in community of property to Dorris Mvula

was married in community of property to Jackie Buhla (previously Mvula) which marriage was dissolved by virtue of a final order of divorce granted by the High Court of South Africa under case number 1234/2005 dated 17 June 2005;

AND WHEREAS the said Jackie Buhla (previously Mvula) has by virtue of an addendum to the deed of settlement dated 25 March 2006, sold her half share in the above property to the said John Mvula and Dorris Mvula for R100 000,00;

NOW THEREFORE we apply to the Registrar of Deeds, at Kimberley, for an endorsement to be made on Deed of Transfer T4321/1996 in terms of section 45bis(1)(a) of the Deeds Registries Act 46 of 1937 to the effect that we are entitled to the one half share of the property by virtue of John Mvula's marriage in community of property to Jackie Buhla (previously) Mvula and one half share in terms of the addendum to the settlement agreement as aforesaid, as if we have taken formal transfer thereof.

Thus done and signed at Kimberley on 10 May 2006

As witnesses:

1 \_\_\_\_\_

\_\_\_\_\_  
John Mvula

2 \_\_\_\_\_

\_\_\_\_\_  
Dorris Mvula

[12]

For the rest of the answer to Question 2.1, see page 4 hereafter.

- 2.2** 2.2.1 **Title Deed** - (existing deed of Transfer T 14321/1996)  
2.2.2 **Transfer duty receipt**  
2.2.3 **Rates clearance certificate**  
2.2.4 **Divorce Order** (certified)  
2.2.5 **Deed of settlement** (certified)  
2.2.6 **Addendum to the deed of settlement** (certified)  
2.2.7 Existing **mortgage bond** B 3214/1996 [7]
- 2.3** Nil <sup>1</sup> [1]

Prepared by me

Form T

CONVEYANCER  
Frantzen E

### Consent

We, the undersigned,

John Mvula

Identity Number 651212 5095 088

and

Dorris Mvula

Identity Number 670116 0073 082

Married in community of property to each other

the mortgagor under Mortgage Bond B3214/1999 passed by me,

John Mvula

Identity Number 651212 5095 088

Married in community of property to Dorris Mvula

and

Jackie Buhla (previously Mvula)

Identity Number 650917 0008 084

Married in community of property to Jonathan Buhla

in favour of ABC Bank Limited for the sum of R140,000.00 do hereby:

- 1 Consent to the release of the said Jackie Buhla and Jonathan Buhla from liability under the said Bond;
- 2 Assume full liability for all indebtedness under the said bond; and
- 3 Consent to the substitution of ourselves as the sole debtor in respect of the said bond.

Signed at Kimberley on 10 May 2006

As Witnesses: 1 \_\_\_\_\_

\_\_\_\_\_ John Mvula

2 \_\_\_\_\_

\_\_\_\_\_ Dorris Mvula

<sup>1</sup> The acquisition of property with a value of less than R500,000.00 was exempt from the payment of transfer duty for natural persons at the time of this exam.

AND

I, the undersigned Edward Piccard, duly authorised thereto by virtue of a resolution of the Directors of ABC Bank Limited No 1991/00236/06 being the legal holder of the aforementioned bond, do hereby consent to the release, assumption of liability and substitution of debtor as aforesaid.

Signed at Kimberley on 15 May 2006

As Witnesses: 1 \_\_\_\_\_  
 2 \_\_\_\_\_

\_\_\_\_\_ For and on behalf of ABC Bank Limited  
 [10]

**Question 3 - Model answer [10]**

Prepared by me  
CONVEYANCER  
Le Roux GJ

**Application in terms of Section 40(1)(b)  
of the Administration of Estates Act, 66 of 1965**

I the undersigned,  
Adriaan Boshoff  
in my capacity as executor in the estate of the late Peter Jansen, acting by virtue of Letters of Executorship No 123/2005 issued by the Master of the High Court (Transvaal Provincial Division) at Pretoria on 15 November 2005

do hereby apply to the Registrar of Deeds at Pretoria for the endorsement of Deed of Transfer No T1718/1980 in terms of Section 40(1)(b) of the Administration of Estates Act, 66 of 1965 in respect of the following property

Erf 121 Douglas Township  
Registration Division I.T., Province of Mpumalanga  
Measuring: 2000 (two thousand) Square Metres

to the effect that the stipulations of the will of the late Peter Jansen, dated at Pretoria on 16 November 1680, shall be applied to the said title deed to the effect that the abovementioned property shall be administered by the trustees appointed in terms of the stipulations of the abovementioned will.

Signed at Hazyview on 10 May 2006

As Witnesses:  
 1 \_\_\_\_\_  
 2 \_\_\_\_\_

\_\_\_\_\_ Executor

## Question 4 - Model answer

[25]

- 4.1 "... do hereby consent to the consolidation of Erven 19 and 20 in the township of Barkly West, Province of KwaZulu Natal, to be known as:

ERF 51 Barkley West <sup>2</sup>  
Registration Division E.T., Province of KwaZulu Natal  
Measuring: 2500 (two thousand five hundred) square metres" <sup>3</sup> [5]

- 4.2 "... do hereby consent to the registration of servitude to convey electricity over the property mortgaged under the said bond, which servitude will be registered in favour of ESKOM, free from the bond" <sup>4</sup> [3]

OR

"... do hereby consent to the registration of a servitude to convey electricity in favour of ESKOM as more fully set out in the attached concept notarial deed of servitude over

Erf 51 Barkley West  
Registration Division E.T., Province of KwaZulu Natal  
Measuring: 2500 (two thousand five hundred) Square Metres"

- 4.3 "... do hereby consent to:

- 1 the opening of Township Register in respect of the property mortgaged under the said bond and to be known as the Township of Barkly West; and
- 2 the registration of the general plan S.G. A9945/2006." <sup>5</sup> [3]

- 4.4 4.4.1 "... do hereby consent for the release of the following property from the operation of the said bond, namely:

Portion 8 of Erf 51 Barkley West  
Registration Division E.T., Province of KwaZulu Natal  
Measuring: 700 (seven hundred) Square Metres" [4]

---

2 You may use the property description applicable in the area where you practice.

3 Form MM to the Deeds Registries Act must be used for all the consents in this question.

4 In respect of the last four words, see section 65(3) of the Deeds Registries Act

5 Although the model answer of the examiners does not indicate that consent must also be given to the registration of the general plan, this must also be done, as the application for the opening of a township register includes an application of the registration of the general plan.

4.4.2 “... do hereby consent to the issue of a Certificate of Registered Title in terms of Section 43 of the Deeds Registries Act No 47 of 1937 in respect of the following property, namely:

Portion 3 of Erf 51 Barkley West  
Registration Division E.T., Province of KwaZulu Natal  
Measuring: 800 (eight hundred) Square Metres”

[5]

**4.5** “... do hereby consent to:

- 1 The opening of Sectional Title register in respect of the land mortgaged under the abovementioned bond;
- 2 The registration of the sectional plan in respect of the land and building or buildings known as Comores and situate at

ERF 51 Barkley West  
Registration Division E.T., Province of KwaZulu Natal  
Measuring: 2500 (two thousand five hundred) square metres  
Held by Deed of Transfer T776/1960<sup>6</sup>

- 3 The noting on the abovementioned bond to the effect that it bounds the sections and common property as shown on the sectional plan<sup>7</sup>;
- 2 The issue of Certificates of Registered Sectional Title in respect of each section and its undivided share in the common property.”

[5]

---

6 Although the model answer of the examiners does not have nr 2 & 3 as part of their answer, we suggest that this should be added to the consent.

7 Section 11(3)(d) specifically prescribes that consent for this must be given by the mortgagee.

Prepared by me

CONVEYANCER  
Frantzen E

Form O

### Certificate of Consolidated Title <sup>8</sup>

WHEREAS John Brown

Identity Number 400605 5054 081 and

Rachel Brown

Identity Number 430419 0039 083

Married in community of property to each other

have applied for the issue to them of a Certificate of Consolidated Title under the provisions of Section 40 of the Deeds Registries Act 47 of 1937;

AND WHEREAS they are the registered owners of:

- 1 Remaining Extent ERF 100, Warrenton Township  
District of Kimberley,<sup>9</sup> Northern Cape Province  
Held under Deed of Transfer No. T1234.1993
  
- 2 Portion 1 of ERF 100, Warrenton Township  
District of Kimberley, Northern Cape Province  
Held under Deed of Transfer No. T5678.1996

Which have been consolidated into the land hereinafter described;

---

<sup>8</sup> See the **example** of a **Certificate of Consolidated Title** in your notes.

<sup>9</sup> Or "Registration Division" in case of property to be registered in the Deeds Registries of Pretoria, Johannesburg, Pietermaritzburg and Vryburg.

NOW THEREFORE in pursuance to the provisions of the said Act, I the Registrar of Deeds at Kimberley, do hereby certify that the said

John Brown

Identity Number 400605 5054 081 and

Rachel Brown

Identity Number 430419 0039 083

Married in community of property to each other

their heirs, executors, administrators or assigns, are the registered owners of

Erf 200 Warrenton Township

District of Kimberley, Northern Cape Province

Measuring: 3000 (three thousand) square metres

As will more fully appear from Diagram S.G. No 55/1994 annexed hereto <sup>10</sup>

The property held hereunder is subject to the following conditions:

- 1 The former Remaining Extent of Erf 100, Warrenton represented by the figure AxyD on the said Diagram S.G. No. 55/1994 is subject to the following condition:

"A portion measuring approximately 200 square metres has been expropriated by the Municipality for road widening purposes as will more fully appear from expropriation notice EX84/1993."

- 2 The former portion 1 of Erf 100 Warrenton represented by the figures xBCy on the said Diagram S.G. No. 55/1994 is subject of the following condition:

"By Notarial Deed K10/1970 the property held by hereunder is subject to Servitude of right of way 4 metres wide in favour of Erf 100, Warrenton and which is indicated by the figure pCBr on the said Diagram S.G. No. 55/1994."

AND further subject to all such conditions as are mentioned or referred to in the aforesaid deeds.<sup>11</sup>

AND that by virtue of these presents, the said John Brown and Rachel Brown, their heirs, executors, administrator or assigns, now is and henceforth shall be entitled thereto conformably to local custom, the State, however reserving its rights.

In witness whereof I, the said Registrar, have subscribed to these presents, and have caused the seal of office to be affixed thereto.

Thus done and executed at the office of the Registrar of Deeds at Kimberley on this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Registrar of Deeds

[14]

10 The answer of the examiners also refers to the two title deeds in terms whereof the components are being held. It is not the practice to refer to same and the prescribed form O also does not make provision for the insertion of these title deed numbers.

11 This clause is only used in the following Deeds Registries, namely:- Johannesburg, Pretoria, Kimberley, Vryburg and King William's Town.

**Application and consent in terms of Section 40(5)(a)  
of the Deeds Registries Act 47 of 1937**

We, the undersigned,

John Brown  
Identity Number 400605 5054 081 and  
Rachel Brown  
Identity Number 430419 0039 083  
Married in community of property to each other

having applied for the issue of a Certificate of Consolidated Title in respect of  
ERF 200 Warrenton Township  
District of Kimberley, Northern Cape Province  
Measuring: 3000 (three thousand) square metres  
represented on Diagram S.G. No. 55/1994

comprising the  
Remaining Extent of Erf 100 Warrenton Township  
District of Kimberley, Northern Cape Province  
Measuring: 2000 (two thousand) square metres

MORTGAGED under Mortgage Bond No B171/1993 and other land,

DO hereby apply for the consolidated land as represented on the said Diagram to be substituted for the aforesaid land mortgaged under the said bond.

Signed at Warrenton on 10 May 2006

As Witnesses: 1 \_\_\_\_\_  
2 \_\_\_\_\_  
John Brown  
Rachel Brown

AND I, the undersigned,  
Herschell Gibbs, the signing officer of  
The Best Bank Limited  
Registration Number 1970/005832/06

duly authorised hereto by virtue of a Resolution of the Directors of the said Bank, the said Bank being the legal holder of the aforesaid bond, do hereby consent to the substitution of the consolidated land as represented on the said Diagram for the aforesaid land mortgaged under the said bond.

Signed at Kimberley on 15 May 2006

As Witnesses: 1 \_\_\_\_\_  
2 \_\_\_\_\_  
H Gibbs  
[12]

- 5.3 5.3.1 **Application** by the owner for the issue of a Certificate of Consolidated Title  
 5.3.2 **Certificate of Consolidated Title** (concept)  
 5.3.3 **Consolidation Diagram** S.G. No 55/1994 (in duplicate)  
 5.3.4 The **title deeds** of each component (T1234/1993 & T5678/1966)  
 5.3.5 Consent by the local authority and conditions, if any, imposed with the approval of the consolidation.  
 5.3.6 **Mortgage Bond** B171/1993  
 5.3.7 **Application** by the owner and **consent** by the mortgagee in terms of Section 40(5)(a) [6]
- 5.4 5.4.1 Copies of the **identity documents** of both John and Rachel Brown  
 5.4.2 **Marriage certificate** of John and Rachel Brown  
 5.4.3 Affidavit by John and Rachel Brown re their **marital status and solvency**.<sup>12</sup> [3]

**Question 6 - Model answer**<sup>13</sup> [18]

- 6.1 And the Appearer declared that:  
 Whereas the undermentioned transferees are entitled to the property hereinafter described as the sole intestate heirs in terms of section 1(1)(d)(ii) of the Intestate Succession Act No. 81 of 1987 of the said late Allan Winter, unmarried, who died on 5<sup>th</sup> February 1996;

**TRANSFEREES:**

- 1 Joseph Winter  
 Identity Number 400102 5003 08 1  
 Unmarried<sup>14</sup>  
 (as to one-half (½) share)
- 2 Robert Winter  
 Identity Number 631003 5031 08 2  
 Unmarried  
 (as to one-quarter (1/4) share)
- 3 Frank Winter  
 Identity Number 651112 5045 08 3  
 Unmarried  
 (as to one-quarter (1/4) share)

---

12 Although the model answer of the examiners does not mention it, compliance with the Financial Intelligence Centre Act is also a requirement and an **affidavit** in this regard as well as **proof of the residential address** and **income tax numbers** of John and Rachel Brown should also be obtained.

13 This question was asked in the examination paper of July 2004, Part 1, Question 8.

14 Or "a widower".

**DOCUMENTS for lodgement:**

- 1 **Certificate of the Receiver** that the estate is not registered for VAT or a transfer duty exemption certificate
- 2 **Rates Clearance Certificate**
- 3 Certified copy of the **death notice**<sup>15</sup>  
(In Cape Town and Kimberley: An affidavit/certificate by the executor that the deceased died intestate).<sup>16</sup>
- 4 **Conveyancer certificate in terms of Section 42(1)** of the Administration of Estates Act 66 of 1965
- 5 Certified copy of the **liquidation and distribution account**
- 6 Certified copy of the **affidavit of next of kin**<sup>17</sup>

[11]

**6.2** And the Appearer declared that:

Whereas the undermentioned transferee is entitled to the property hereinafter described in terms of the will dated 3<sup>rd</sup> June 1990 of the said late Anne Smithers, a widow who died on 31<sup>st</sup> January 1996, subject to the condition that on his death the property is to devolve on his son, Martin<sup>18</sup>, as mentioned hereunder

**TRANSFeree:**

Henry Smithers

Identity Number 600918 5012 084

Married in community of property to Gillian Smithers<sup>19</sup>

**DOCUMENTS for lodgement:**

- 1 **Certified copy of the Will** of late Anne Smithers. The will must be accepted and certified by the Master- Regulation 50 of the Deeds Registries Act.
- 2 **Section 18(3)** of the Administration of Estates Act **appointment** by the Master (to prove that a Section 42(1) certificate is not necessary).
- 3 **Certified copy of the Inventory**<sup>20</sup>

[7]

---

15 To prove the intestate estate and the relationship with the father.

16 In Cape Town and Kimberley 'n death notice is no longer accepted as proof that the deceased died intestate. An affidavit by the executor that the deceased did not leave a valid will is now a requirement.

17 To prove the relationship with the brothers.

18 Or the following alternative wording: "... **subject to a fideicommissum in favour of his son, Martin**, as mentioned hereunder". The condition must then be fully cited in the conditional clause.

19 Candidates will be penalized for joining Gillian Smithers as co-transferee, as this is a fiduciary property.

20 In the case of a Section 18(3) estate where the value of the estate is R125 000,00 and less.

**Power of Attorney to pass transfer**

I, the undersigned,

Stan Johnson  
Identity Number 420701 8774 088  
Unmarried

do hereby nominate, constitute and appoint Gabriël Jacobus le Roux and/or Erinda Frantzen jointly and severally, each with power of substitution, to be my true and lawful attorney and agent in my name, place and stead to appear before the Registrar of Deeds at Pretoria and then and there as my act and deed to declare that:

WHEREAS I concluded a deed of sale on 8 January 2006 with John Brown for the acquisition by myself of

Remaining Extent of Erf 50 Genadedal Township  
Registration Division J.R., Province of Gauteng  
In Extent: 800 (eight hundred) square meters

for the purchase price of R500 000,00 (five hundred thousand rand);

AND WHEREAS in error the land described as

Portion 1 of Erf 50 Genadedal Township  
Registration Division J.R., Province of Gauteng  
In Extent: 700 (seven hundred)) square meters

was transferred by John Brown to me by Deed of Transfer T333/2006.

AND WHEREAS the said Portion 1 of Erf 50 Genadedal Township was sold by the said John Brown on 15 January 2006 to Peter Smith and Sheila Smith (married to each other in community of property).

AND WHEREAS the Remaining Extent of Erf 50 Genadedal as described above was transferred in error to aforementioned Peter Smith and Sheila Smith by Deed of Transfer No. T334/2006;

AND WHEREAS I agreed on 2 May 2006 to rectify the error by transferring to Peter Smith and Sheila Smith the said Portion 1 of Erf 60 Genadedal Township;

NOW THEREFORE, I hereby authorise my said attorney and agent to cede and transfer in full and free property to the said

Peter Smith  
Identity Number 690327 5006 082  
and  
Sheila Smith  
Identity Number 710313 4047 084  
married in community of property to each other

the property described as-

Portion 1 of Erf 50 Genadedal Township  
Registration Division J.R., Province of Gauteng  
In Extent: 700 (seven hundred) square meter

Held by Deed of Transfer T 333/2006

Dated at Pretoria this 10<sup>th</sup> day of May 2006

As witnesses: 1 \_\_\_\_\_

\_\_\_\_\_  
Stan Johnson

2 \_\_\_\_\_

[15]

The following is provided as an alternative:

Prepared by me

CONVEYANCER

Le Roux GJ

### Power of Attorney to pass transfer

I, the undersigned,  
Stan Johnson  
Identity Number 420701 8774 088  
Unmarried

do hereby nominate, constitute and appoint Gabriël Jacobus le Roux and/or Erinda Frantzen jointly and severally, each with power of substitution, to be my true and lawful attorney and agent in my name, place and stead to appear before the Registrar of Deeds at Pretoria and then and there as my act and deed to declare that:

WHEREAS on 8 January 2006 I acquired the following property from John Brown, namely:

The Remaining Extent of Erf 50 Genadendal Township  
Registration Division J.R., Province of Gauteng  
In Extent: 800 (eight hundred) square meters

which property was, due to an error, transferred to the undermentioned Transferees by Deed of Transfer No. T334/2006;

And whereas on 15 January 2006 the undermentioned Transferees acquired Portion 1 of Erf 50 Genadendal Township (hereinafter more fully described) from John Brown, which property was due to an error, transferred to me by Deed of Transfer No. T333/2006;

And whereas on 2 May 2006 the said Transferees and I mutually agreed to rectify the position and to pass transfer in favour of

Peter Smith  
Identity Number 690327 5006 082  
and  
Sheila Smith  
Identity Number 710313 4047 084  
Married to each other in community of property

In respect of the following property, namely:

Portion 1 of Erf 50 Genadendal Township  
Registration Division J.R., Province of Gauteng  
In Extent: 700 (seven hundred) square metres

Held by Deed of Transfer T333/2006

Executed at Pretoria on 10 May 2006.

As witnesses: 1 \_\_\_\_\_

2 \_\_\_\_\_

Stan Johnson

[15]

8.1 causa

AND the said Appearer declared that the said Robust Properties CC, the developer of the scheme known as Toscana No SS 175/1996, has in terms of section 34(3) of the Sectional Titles Act, 95 of 1986, sold the whole of its interest in and to the said scheme to the undermentioned transferee for the amount of R1,500,000.00 (one million five hundred thousand rand) on 9 March 2006 <sup>21</sup>

and that he ...

**property clause**

All the right, title and interest in the land and building or buildings in the scheme known as Toscana, situate at Estcourt Township, Wembezi Transitional Local Council Area, which interest consists of <sup>22</sup>

- 1 Sections No 1 in extent 120 (one hundred and twenty) square metres as shown and more fully described on Sectional Plan No. SS175/2006 and an undivided share in the common property apportioned in accordance with the participation quota as endorsed on the said sectional plan.<sup>23</sup>

Held by Certificate of Registered Sectional Title ST 667/2006 (1)(UNIT)

- 2 Section No 2 in extent 120 (one hundred and twenty) square metres as shown and more fully described on Sectional Plan No. SS175/2006 and an undivided share in the common property apportioned in accordance with the participation quota as endorsed on the said sectional plan.

Held by Certificate of Registered Sectional Title ST 668/2006 (2)(UNIT)

(The property descriptions of sections 3 - 10 have to be repeated here)

[4]

---

21 The causa can also read as follows: "AND the said Appearer declared that the said Robust Properties CC had on the 9<sup>th</sup> March 2006 truly and legally sold, for the sum of R1,500,000.00 (one million five hundred thousand rand) ...".

22 Form H specifically provides in a footnote that **the sections should be listed separately**. The model answer of the examiners is incorrect where they indicated that candidates will be penalised if they separately list the units.

23 See form H in the regulations to the Sectional Titles Act for the description.

## 8.2

### **Conveyancer's certificate in terms of Section 34(4) of Act 95 of 1986**

I, Gabriël Jacobus le Roux, Conveyancer, do hereby certify, in connection with the transfer from -

Robust Properties CC

No 1998/003259/23

to

The Trustees of the Angus Temple Family Trust

No IT789/1985

of all the right title and interest in the land and building or buildings in the scheme known as Toscana, situate at Estcourt Township, Wembezi Transitional Local Area, which interest consists of Sections 1 to 10 as shown and more fully described on Sectional Plan No. SS175/2006 and undivided shares in the common property apportioned in accordance with the participation quota as endorsed on the said sectional plan.

That:

- 1 The Body Corporate is not yet deemed to be established in terms of Section 36(1) of Act No. 95 of 1986 and accordingly no monies are payable to a Body Corporate.
- 2 No provision has been made under any law for the separate rating of the units.

DATED at Pietermaritzburg this 10<sup>th</sup> day of May 2006.

\_\_\_\_\_  
Conveyancer  
[10]

- 8.3**
- 1 **Deed of transfer**
  - 2 **Power of Attorney** to Transfer
  - 3 **Transfer Duty** Receipt or Transfer Duty Exemption Certificate
  - 4 **Rates Clearance Certificate** in respect of the "sectionalised" property from the Local Authority - Section 34(4)(a)(l)
  - 5 **Titles** of all ten (10) units - (*certificates of registered sectional title*) [6]

## Question 9 - Model answer

[17]

- 9.1 Erf 101 Fairlands Township, Registration Division I.R., Province of Gauteng  
Measuring: 900 (nine hundred) square metres

as will appear from general plan SG No 75/2005 and held by deed of transfer T816/2004<sup>24</sup> [6]

- 9.2 First transferred and still held by deed of transfer T 8569/2004 with general plan SG No 75/2005 relating thereto.<sup>25</sup> [4]

- 9.3.1 A certificate of registered title must be taken out in respect of Portion 1 and the remainder must be transferred by a deed of transfer. [3]

- 9.3.2 First transferred by deed of transfer T 8569/2004 with general plan SG No 75/2005 relating thereto and held by deed of transfer T 246/2005<sup>26</sup>. [4]

## Question 10 - Model answer

[17]

For the answer to Question 10.1, see page 20 below

- 10.2
- 1 **Application** for Opening of Township Register in terms of Section 46 of the Deeds Registries Act 47 of 1937
  - 2 **Deed of Transfer** T 300/2004
  - 3 **General Plan** SG no 202/2006
  - 4 **Conditions of establishment** by the local authority
  - 5 **Certificate by the Local Authority** confirming compliance with the pre-establishment Conditions
  - 6 **Mortgage bond**
  - 7 **Consent by the mortgagee** for the opening of the township register and the registration of the general plan<sup>27</sup> [7]

---

24 Form TT is used, as a new property is created.

25 Form UU, adapted, is used.

26 Form UU is used.

27 The consent must be drafted in accordance with form MM in the regulations to the Deeds Registries Act.

**Application in terms of Section 46  
of the Deeds Registries Act for the opening of a township register  
and the registration of a general plan**

I, the undersigned,

Adriaan Boshoff  
duly authorised thereto by a resolution of the directors of  
Kudu Developers (Pty) Ltd  
No 1999/001236/07

do hereby apply to the Registrar of Deeds at Pretoria in terms of Section 46 of the Deeds Registries Act 47 of 1937 for:

- 1 The opening of a township register for the township to be known as Boksburg Extension 41 situated on-  
Portion 100 (a portion of Portion 75) of the Farm Klipfontein 83  
Registration Division I.R., the Province of Gauteng  
  
Measuring: 4,3690 (four comma three six nine nil) hectares  
  
Held by deed of transfer T 300/2004
- 2 The registration of general plan SG No 202/2006.

Signed at Boksburg on 10 May 2006

---

qq Kudu Developers (Pty) Ltd

**TOTAL MARKS [200]**

# Model Answers to the Conveyancing Examination

## May 2006

### Part 2

#### Self-Study Deeds Course

---

##### Question 1 - Model answer

[4]

- 1 Where the owner of immovable property has died and his descendant has died a minor, intestate and no executor has been appointed in his estate, the executor in the estate of the deceased owner may pass the property directly to the heirs *ab intestato* of the deceased minor;
- 2 Where the value of the immovable property which has vested in any heir or legatee would be equalled or exceeded by the costs involved in transferring or ceding it to the heir or legatee and the heir or legatee has sold the property, the executor may, with the consent in writing of the heir or legatee, pass transfer directly to the purchaser;
- 3 Where the heirs and legatees of a deceased person have entered into a redistribution agreement, the executor or trustee of such land may transfer or cede the real right therein directly to the person entitled thereto in terms of the redistribution agreement;
- 4 On the redistribution of assets in a joint estate of spouses who were married in community of property and have been divorced;
- 5 On the redistribution of assets of a partnership on dissolution of the partnership;
- 6 If a fiduciary interest in land or a real right in land terminates before transfer of the land or cession of the real right has been registered in favour of the fiduciary, it shall be competent to transfer the land or cede the right directly to the fideicommissary;
- 7 If the right of any person to claim transfer of such land from any person has been vested in a third person in terms of any judgement or order of any court or a sale in execution held pursuant to such judgement or order, transfer of such land may be passed directly to such third person by the person against whom such right was exercisable.

##### Question 2 - Model answer

[3]

No. In terms of Section 38 of the Companies Act, it is not permitted but you can convert the company to a close corporation.

##### Question 3 - Model answer

[2]

Yes, the consent of both parents is necessary in terms of the Guardianship Act 192 of 1993.

**Question 4 - Model answer** [2]

No, in terms of Section 15(2)(a) and (b) of the Matrimonial Property Act, 88 of 1984, the written consent of the other spouse must be obtained.

**Question 5 - Model answer** [9]

- 1 A right of way, aqueduct, pipe line or conducting of electricity within a width not exceeding 15 metres; [3]
- 2 A servitude which is supplementary to a servitude referred to in 1, and which has a servitude area not exceeding 225 square metres, which adjoins the area of the last mentioned servitude; [3]
- 3 A usufruct over the whole of agricultural land in favour of one person, or in favour of such person and his spouse or the survivor of them if they are married in community of property. [3]

**Question 6 - Model answer** [3]

- 6.1 6.1.1 Authentication by a Notary Public. [3]  
6.1.2 Authentication by a South African Consular Official. [1]
- 6.2 Yes, i.t.o. Rule 63 of the High Court Rules to the High Court Act. [1]

**Question 7 - Model answer** [6]

- 7.1 Transfer duty paid by both parties on the higher amount of R650,000.00. [2]
- 7.2 8% of the purchase price. [1]
- 7.3 None. [1]
- 7.4 Transfer duty is payable on ½ (one half share) as if transfer to his wife was affected.<sup>28</sup> Transfer however need not take place to his wife. Further, transfer duty is payable by Johnson in the usual amount. [2]

**Question 8 - Model answer** [6]

In terms of Section 13 of the Housing Consumers Protection Measures Act 95 of 1998 the Agreement:

- 1 shall be in writing and signed by the parties; [1]
- 2 shall set out all material terms, including the financial obligations of the housing consumer; and [2]

---

28 See section 92(2) of the Deeds Registries Act 47 of 1937.

- 3 shall have attached to the written agreement as annexures, the specifications pertaining to materials to be used in construction of the home and the plans reflecting the dimensions and measurements of the home, as approved by the local government body: Provided that provision may be made for amendments to the plans as required by the local government body. [3]

### Question 9 - Model answer [6]

Written application in terms of section 44 of the Deeds Registries Act, requesting the endorsement of the title deed and for the substitution of the old diagram for the new diagram. [2]

#### Documents to be lodged:

- 1 Application in terms of section 44 of the Deeds Registries Act
- 2 The **title deed**
- 3 The **substituted diagram** in duplicate as approved by the Surveyor General together with, if possible, the clients copy of the original diagram.
- 4 **Mortgage bond** and the **bondholder's consent** to the endorsement of the title deed and substitution of the old diagram for the new diagram.
- 5 The **lease agreement** as well as the **consent of the lessor** as per (4) above. [4]

### Question 10 - Model answer [6]

- 10.1 where all the land burdened under the bond is not transferred to the new proposed debtor (does not apply to where a joint owner transfers his share to another joint owner or any other person);<sup>29</sup> [1]
- 10.2 where the transferor has reserved a real right in such land in favour of himself; [1]
- 10.3 where the transferor (the existing debtor) is one of the following, namely:  
10.3.1 a trustee in an insolvent estate  
10.3.2 an executor in an insolvent deceased estate<sup>30</sup>  
10.3.3 a liquidator of a company or close corporation which is unable to pay its debts  
10.3.4 a liquidator or trustee elected or appointed in terms of the Agricultural Credit Act 28 of 1966; [2]
- 10.4 where the new owner himself is not in a position or competent to mortgage the land; [1]
- 10.5 where the bond to be replaced is a bond to secure the obligation of surety; [1]
- 10.6 Mortgagors under a notarial bond may not be substituted in terms of the provision of section 57(1).<sup>31</sup>

---

29 Registrar's Conference Resolution 7 of 1994.

30 In other words an executor who administers the deceased estate in terms of section 34 of the Administration of Estates Act 66 of 1965.

31 Chief Registrar's Resolution 18(b) of 1996.

## Question 11 - Model answer

[3]

Cession of bond by executor without the need of assistance from surviving spouse.<sup>32</sup> No section 42(1) certificate is necessary as this section only applies to immovable property and a mortgage bond is movable.

## Question 12 - Model answer

[4]

12.1 within 3 months of its execution or such extended period as the Court may on application allow.<sup>33</sup> [2]

12.2 within 6 months of its execution or within such extended period as the Court may on application allow.<sup>34</sup> [2]

## Question 13 - Model answer

[8]

- 1 **Written application** in terms of section 25(3) of the Deeds Registries Act<sup>35</sup> must be made by or on behalf of all the children. If some of them are minors or incompetent in any way, they should be assisted or, when necessary, the application must be brought by their lawful representatives; [2]
- 2 An affidavit confirming the children's identity must be lodged; [1]
- 3 Proof must be submitted that the identity of all the children has been established i.e. a death notice, death certificate or a Court Order that a woman cannot procreate any further children;<sup>36</sup> [2]
- 4 The original title deed to be endorsed;<sup>37</sup>
- 5 If the land or real right is hypothecated by a registered bond, the mortgagee's consent is not required and the bond need not be lodged.<sup>38</sup> [1]

---

32 One of the exceptions provided for in section 21 of the Deeds Registries Act 47 of 1937.

33 See section 87(1) of the Deeds Registries Act 47 of 1937.

34 See section 87(2) of the Deeds Registries Act 47 of 1937.

35 If land or a real right therein or a mortgage bond has been registered in the name of a specific person in trust for children born or still to be born of that person, or if such land, real right or mortgage bond has been registered in the name of the parents of children born or to be born from a specific marriage, and the identity of all the children have been established, application may be made to the Registrar of Deeds for an endorsement against the title deed of the land concerned setting out the children's names (section 25(1) and (3), Act 47 of 1937). Although the question did not ask what section 25 makes provision for (only the documents to be lodged was asked) the examiners allocated two marks to the paragraph in this footnote.

36 Ex parte Harmse 1917 TPD 585.

37 Although the title deed to be endorsed must also be lodged, this was not part of the examiners' model answer.

38 See Registrars' Conference Resolution No. 31 of 1972.

## Question 14 - Model answer

[8]

Documents to be lodged:

- 14.1 **A deed of transfer** in prescribed form H to the regulations;<sup>39</sup>
- 14.2 A copy of the **unanimous resolution**, referred to in section 17, certified by two trustees of the body corporate;<sup>40</sup>
- 14.3 A **diagram** (in duplicate) approved by the Surveyor General if the portion of land is not already demarcated on an approved diagram;<sup>41</sup>
- 14.4 All the **mortgage bonds** over units in the scheme and related **written consents of bondholders** in terms of section 56 and 57 of the Deeds Registries Act for disposal in respect of the portion concerned;<sup>42</sup>
- 14.5 All the normal prescribed documents e.g. special power of attorney, a **transfer duty receipt, rates clearance, all consents required in terms of legislation to the subdivision.**
- 14.6 The written **consent of the owner of the section to be cancelled** to such cancellation of the section.
- 14.7 All **mortgage bonds registered over the unit** with the **consent to cancellation** of the bondholders.
- 14.8 The **title deeds of any real rights** registered over the unit. The act and CRC's are silent about the consents of holders of such rights but it is submitted that such consents must be lodged to cancellation.

## Question 15 - Model answer

[6]

It is a right enjoyed by the possession of the property of another on which he or she has spent money or labour, to retain possession of that property until properly compensated for that expenditure, either according to contract or if there is no contract, for the actual expenditure of money or labour (but in the case of absence of a contract regulating compensation) not exceeding the extent for which the owner has been enriched.

---

39 Section 17(3) of the Sectional Titles Act 95 of 1986.

40 Section 17(1) and 17(2) of the Sectional Titles Act 95 of 1986 and CRC 18/1997.

41 Section 17(3)(a) of the Sectional Titles Act and CRC 18/1997.

42 Section 18 of the Sectional Titles Act and Registrar Conference Resolutions 35/2002 and 45/2004.

## Question 16 - Model answer

[9]

- 16.1 I, the undersigned,  
Kevin Chetty, in my capacity as executor in the Estate of the late John Pillay,  
Estate Number 1942/1999, duly authorised hereto by virtue of Letters of Executorship  
issued by the Master of the High Court (Transvaal Provincial Division) dated 21  
January 2006<sup>43</sup> [3]
- 16.2 16.2.1 **Existing title deed**  
16.2.2 **Draft Deed of Transfer**  
16.2.3 **Power of Attorney** (duly endorsed by the Master in terms of **section 42(2)** of  
the Administration of Estates Act 66 of  
16.2.4 **Transfer duty receipt**  
16.2.5 **Rates clearance certificate**  
16.2.6 **Certificate by executor or conveyancer** to the effect that the property was  
sold to pay the debt of the joint estate. [6]

## Question 17 - Model answer

[10]

- 17.1 To sell, donate or exchange. [2]
- 17.2 A deed of alienation is an agreement in terms of which land is sold, donated or  
exchanged. A contract is a deed of alienation in terms of which land is sold and the  
purchase price is payable in more than two installments over a period of more than  
one year. [4]
- 17.3 It must be in writing and signed by both parties or their duly appointed agents. The  
appointment must be in writing. [3]
- 17.4 No. [1]

## Question 18 - Model answer

[5]

Dealings with the common property are dealt with in Section 17 of the Sectional Titles Act, 95  
of 1986. The following procedure is to be adopted, namely:-

- 1 The owners by unanimous resolution direct the body corporate to alienate portion of  
the common property. [1]
- 2 A diagram is prepared in respect of the portion to be alienated. [1]
- 3 Transfer is effected by the trustees of the body corporate and registration is affected  
by deed of transfer in favour of the transferee registered by the Registrar of Deeds.  
The Registrar shall make the appropriate endorsements on his records. The transfer  
must be accompanied by a copy of the resolution referred to in (1) above, certified by  
two trustees of the body corporate. [1]
- 4 The consent of all bondholders in respect of the units must be obtained and lodged  
simultaneously. [1]
- 5 The Registrar shall notify the Surveyor General of the reversion of the land to the land  
register and the Surveyor General shall make the appropriate endorsement on the  
original sectional plan and on the Deeds Registry's copy. [1]

**TOTAL MARKS [100]**

---

43 Only the executor signs the power of attorney, as one of the exceptions in section 21 of the Deeds  
Registries Act is applicable.

Compiled by

**Gawie le Roux**

BA(Law)(UP) LLB (UP) BA Honours (UNISA)  
Attorney and Conveyancer of the High Court of South Africa

and

**Erinda Frantzen**

B Com (Law)(UP) LLB (UNISA)  
Attorney, Conveyancer and Notary of the High Court of South Africa

and published by

**Self-Study Deeds Course CC**

Registration number 1994/016876/23

PO Box 74047  
Lynnwood Ridge  
0040

Flinders Lane 451  
Lynnwood, Pretoria

Tel: **(012) 361-1715**

Faks: **(012) 361-1705**

Web site: [www.aktepraktyk.co.za](http://www.aktepraktyk.co.za)

**SOURCES**

Self-Study Deeds Course for Attorneys  
Model answers of CLE Law Society of South Africa  
Relevant acts, regulations and prescribed forms  
The Consolidated Practice Manuals of the Deeds Office of South Africa