

Model Answers to the Conveyancing Examination

May 2007

Part 1

Self-Study Deeds Course

Question 1 - Model answer

[30]

1.1

Prepared by me

CONVEYANCER
Le Roux G J

Power of Attorney to pass transfer

I, the undersigned,

Adriaan Boshoff
in my capacity as nominee of Best Bank Limited, No 1965/003456/06, and as such the trustee of the Brunhilde Wagner Testamentary Trust MT 123/1992, duly authorised hereto by letters of authorisation issued by the Master of the High Court (Transvaal Provincial Division) at Pretoria on 20 March 1992

do hereby appoint Gabriel Jacobus le Roux and/or Erinda Frantzen

with power of substitution to be my lawful attorney and agent to appear before the Registrar of Deeds at Pretoria and there to declare that:

WHEREAS the late Brunhilde Wagner who died on 6 December 1991 in her will dated 2 December 1988 bequeathed the undermentioned property to her trustees to be held in trust until the undermentioned transferee reaches the age of 21 years;

AND WHEREAS the undermentioned transferee has reached the age of 21 years and is entitled to the undermentioned property in terms of the trust created in the said will, subject to the condition of the will that the said property shall not form part of any community of property, more fully described hereunder;

NOW THEREFORE I hereby authorise the appearer to transfer to

Isolde Wagner
Identity Number 721220 0073 08 8
Unmarried

the following property, namely:

Erf 122 Cornwall Township
Registration Division I R, Province Gauteng
Measuring 1 200 (one thousand two hundred) square metres

Held by Deed of Transfer T64951/1989

Subject to the following condition set out in the will of the said late Brunhilde Wagner:

"It is a condition of inheritances bequeathed in terms hereof that they shall not form part of any community of property or community of profit and loss in respect of marriages subsisting between a beneficiary and his or her present or future spouse"

and generally for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requested, as fully and effectually as I could have done if personally present and acting herein.

SIGNED at Pretoria on this the 9 th day of May 2007.

As Witnesses:

1 _____

2 _____

_____ [15]

1.2 Supporting documents to be lodged ¹

- a) **Existing Title Deed** T64951/1989
- b) **Power of Attorney** to pass transfer
- c) **Rates Clearance Certificate**
- d) **No transfer duty** is payable - need not lodge exemption
- e) **Mortgage Bonds for disposal**, if any
- f) I will only *refer* to the **copy of the will** which was lodged with the application in terms of section 40 of the Administration of Estates Act.

The answers for questions 1.3 and 1.4 are on page 5 hereof

¹ Although the draft **deed of transfer** is not a *supporting document*, the answer provided by the examiners reflects it as one of the supporting documents that had to be listed.

Form LL

Prepared by me

CONVEYANCER

Frantzen E

Surety Bond ²

Known all men whom it may concern:

That **Ilse Pretorius** appeared before me, the **Registrar of Deeds at Johannesburg** she being duly authorised thereto by a power of attorney dated at **Johannesburg** on **1 May 2007** and granted to her by –

Neil Scrooby
Identity Number 650312 5009 08 2
Unmarried
(Hereinafter called the “mortgagor”)

which power of attorney has this day been exhibited to me;

And the Appearer declared that;

WHEREAS –

Scrooby (Proprietary) Limited
No 1980/000321/07
(hereinafter called the "principal debtor")

is truly and lawfully indebted in the sum of **R500,000.00 (five hundred thousand rand)** to and on behalf of –

Settlers Bank Limited
No 1985/007734/06
("the Mortgagee")

arising from **the issue of performances guarantees by the Mortgagee in respect of certain work to be performed by the principal debtor, for which indebtedness the Mortgagee requires indemnification against any claim arising from such performance guarantees;**

² Leave half a page open in the exam above the heading of this bond.

AND WHEREAS the principal debtor granted a written indemnity dated 3 March 2007 as required by the Mortgagee, *for which the principal debtor did not provide security in the form of a mortgage bond*,³

AND WHEREAS the Mortgagee requires the Mortgagor to bind himself as surety and co-principal debtor for the obligations of the principal debtor under the said indemnity;

AND WHEREAS the said **Mortgagor** has agreed to bind himself as surety and co-principal debtor for the due payment of the aforesaid sum and interest thereon and for compliance by the principal debtor with all the terms and conditions of the aforesaid indemnity, as herein specified, mortgaging as security for the fulfillment of the said obligations the herein-after property;

NOW THEREFORE, the appearer declared his principal, the said **Mortgagor** to be truly and lawfully indebted and held and firmly bound to and on behalf of the **Mortgagee** in the sum of **R400 000,00 (four hundred thousand rand)** arising from the considerations aforementioned under renunciation of the legal exceptions *beneficium ordinis seu excussionis*⁴ with the force and effect whereof he declared his principal to be fully acquainted;

And for the proper performance of the Mortgagor's obligations under this bond the appearer q.q. declared to bind specially as a second mortgage

**ERF 1537 Hopewell Township
Registration Division I R, Province of Gauteng
Measuring 3 000 (three thousand) square metres**

Held under Deed of Transfer T 333/1985

subject to the conditions therein contained and subject to the following conditions:

- 1.1 This bond shall in no way interfere with, prejudice or affect the rights and preference of We-Make-Money Bank Limited (No 1990/001234/06) under mortgage bond B334/1985⁵, registered by the Mortgagor against the mortgage property as a first mortgage, which bond rank in preference to this bond and which rights and preference shall remain in all respect as if this bond had not been passed;**

3 A surety bond can be registered for either a secured or an unsecured debt. If registered for an unsecured debt, the surety bond must make mention of this fact.

4 The legal exceptions **non numeratae pecuniae**, **non causa debiti**, and **errorre calculi** may not be waived in any mortgage bond since 1 June 2007 - section 32 of the regulations to the National Credit Act 34 of 2005.

5 Or "its prior ranking mortgage bond".

- 1.2 **The Mortgagee may not cause the property to be attached in execution of a judgment, nor may he sequestrate or liquidate the Mortgagor or place the Mortgagor under judicial management as the case may be, without him first having obtained the consent in writing of We-Make-Money Bank Limited thereto;**
- 1.3 **We-Make-Money Bank Limited may exercise the right granted it under its prior bond to make further advances to the Mortgagor; the Mortgagee shall not cede or assign this bond without the written consent of We-Make-Money Bank Limited;**
- 1.4 **Unless We-Make-Money Bank Limited otherwise agrees this bond shall be handed to and retained by We-Make-Money Bank Limited until this bond or the bond in favour of We-Make-Money Bank limited is cancelled.**

In witness whereof I, the said Registrar, together with the appearer, 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 Johannesburg on _____ 2007.

REGISTRAR OF DEEDS

qq APPEARER

Question 1 - Model answer (continue)

- 1.3 The Section 40 of the Administration of Estates Act endorsement has already been effected. Sections 42(1) and 42(2) of the Administration of Estates Act 66 of 1965 do not apply. [2]
- 1.4 **Documents to be obtained for your file**
- a) Isolde's **identity document** and **affidavit** regarding her solvency and marital status
 - b) **Resolution** whereby Best Bank Ltd **nominates** Adriaan Boshoff
 - c) **Resolution by the trustee** wherein the transfer and termination of the trust is authorised
 - d) **Letters of appointment** of the trustee
 - e) Copy of the **will** of Brunhilde Wagner
 - f) **Solvency affidavit** by the trust [6]

Question 3 - Model answer ⁶

[15]

- a) **Section 16** This is where the State acquires all the land held under any title deed whether by way of expropriation or otherwise or where one local authority by virtue of the provisions of any law acquires all the land under one title deed from any other local authority; [3]
- b) **Section 24bis(2)** If a firm or partnership is dissolved and any land owned by such partnership is awarded to all the partners of such partnership, the Registrar shall endorse on the title deed of the land that such land vests in the individual partners as if they had taken formal transfer in their names; [3]
- c) **Section 25(3)** When the identity of all (previously) unascertained children has been established subsequent to a transfer in terms of section 25(1), the Registrar shall endorse the title deed or bond setting out the names of such children as if transfer or cession had originally been passed to them by name; [3]
- d) **Section 45(1)** Where immovable property constitutes an asset in a joint estate and the surviving spouse has lawfully acquired the share of the deceased spouse in the land the Registrar shall endorse on the title deed of the property that the surviving spouse is entitled to deal therewith as if he/she had taken formal transfer into his/her name of the share of the deceased spouse; [3]
- e) **Section 45 bis(1)(a)
Or 45bis (1)(b)** Where immovable property constitutes an asset in a joint estate and one of such spouses has lawfully acquired the share of the other spouse in terms of a divorce court order or an order and authorisation in terms of Section 20 or 21 of the Matrimonial Property Act 88 of 1984 the Registrar may endorse on the title deed of the property that such spouse is entitled to deal with the property as if he/she had taken formal transfer into his/her name of the share of the former spouse or his/her spouse; [3]
- f) **Section 45 bis (1A)** This section provides that where immovable property registered in the Deeds Registry forms a part of an asset in a joint estate and the spouses divorce or an order is made in terms of Section 20 or 21 of the Matrimonial Property Act 88 of 1984 in terms of which there is a division of the joint estate the Registrar may endorse on the title deed of the property that such spouses are entitled to deal with the individual shares as if they had taken formal transfer into their names of their respective shares in the property [3]

⁶ Any 5 will be accepted (for three marks each).

- (g) **Section 58(2)** Where the insolvent has been re-vested with ownership by virtue of the provisions of the insolvency laws in the land an endorsement is made by the Registrar on the title deed of the land that such land has been restored to the insolvent. The effect of this endorsement is to procure transfer of ownership from the trustee to the rehabilitated insolvent. [3]

Question 4 - Model answer [20]

- 4.1** John Alan
Identity Number 640719 5061 08 8
Married in community of property to Pamela Mary Alan⁷
and
Jane Smith
Identity Number 700115 0385 08 2
Married in community of property to David Crawford Smith
Together carrying on business in partnership as JOJA [3]
- 4.2** 1 Mary Jones
Identity Number 400102 0282 08 4
Unmarried
(As fiduciary)
- 2 Mark Jones
Identity Number 670725 5033 08 8
Married in community of property to Julie Ann Jones⁸
(As holder of the fideicommissary rights) [3]

The answers for questions **4.3** and **4.4** are on page 9

7 The consents of the partners' spouses must be lodged in terms of section 15(2) of the Matrimonial Property Act 88 of 1984.

8 The consent of the fideicommissary heir's spouse, in terms of section 15(2) of the Matrimonial Property Act 88 of 1984 (if married in community of property), must be lodged.

Form I⁹

Prepared by me

CONVEYANCER
Le Roux G J

**Application under Section 15B(5)
of the Sectional Titles Act 1986**

I, the undersigned,

Errol Boyley

in my capacity as trustee and duly authorised thereto by virtue of a resolution of the trustees of Sugarbush Housing Trust, No IT 3437/2003

duly authorised thereto by Letters of Authorisation issued by the Master of the High Court of South Africa (Transvaal Provincial Division) at Pretoria on 21 March 2003

joint owner of:-

A Unit consisting of –

- a) Section No. 42 as shown and more fully described on Sectional Plan No SS 3/2003 in the scheme known as STRATFORD in respect of the land and building or buildings situate at BRYANSTON EXTENSION 77 TOWNSHIP, local authority CITY OF JOHANNESBURG¹⁰, of which section the floor area, according to the said sectional plan is 65 (Sixty Five) square metres in extent and
- b) An undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan.

HELD by Deed of Transfer No ST 9/2003

9 **Form I** in the regulations to the **Sectional Titles Act** must be used.

10 The name of the town Council of Johannesburg is now known as City of Johannesburg.

do hereby apply to the REGISTRAR OF DEEDS at PRETORIA for the issue to them of a Certificate of Registered Title in respect of an undivided ½ (one half) share in the aforesaid unit.

Signed at Johannesburg on 9 May 2007

11

On behalf of Sugarbush Housing Trust

Question 4 Model Answer (continue from page 7)

4.3 Alexis Preller in my capacity as liquidator of
Botbaai (Proprietary) Limited (in liquidation)
No 1989/009870/07
duly authorised hereto by virtue of letters of appointment issued by the Master of the
High Court (Transvaal provincial Division) at Pretoria on 15 January 2007 [3]

4.4 Geoffrey Lomas
Born on 15 February 1956
Married to Mary Jean Lomas
which marriage is governed by the laws of Texas, United States of America, duly
assisted by my spouse [3]

11 Although the model answer provided by the examiners makes provision for witnesses to sign, applications need not be witnessed and the prescribed form in the regulations also does not make provision for the signature of witnesses.

6.1

Prepared by me

CONVEYANCER

Frantzen E

Power of Attorney to pass transfer

We, the undersigned

- 1 Otto Klar
in my capacity as executor in the estate of late Jan Smalberger duly appointed by virtue of letters of executorship 999/1994 issued by the Master of the High Court (Cape of Good Hope) at Cape Town on 3 March 1994
and
- 2 Hester Smalberger
Identity number 461111 0023 08 2
Widow, in my personal capacity as surviving spouse of the deceased to whom I was married in community of property

hereby appoint Ilse Pretorius with power of substitution to be our lawful attorney and agent, to appear before the Registrar of Deeds at Cape Town and declare that:

WHEREAS the said late Jan Smalberger who died on 2 January 1994 did during his lifetime on 2 February 1988 sell the hereinafter-mentioned property to Gert Pienaar, Identity number 450113 5056 004 and Johanna Pienaar, Identity number 480330 0077 08 8 married in community of property to each other, for R30 800,00, subject to a life-long habitatio in favour of himself and his spouse to whom he was married in community of property, as more fully described below;

AND WHEREAS Johanna Pienaar died on 28 September 1989;

and to pass transfer to-

The joint estate of late Johanna Pienaar
Estate Number 287/1989
and her surviving spouse Gert Pienaar
Identity Number 450113 5056 004
Widower

of the undermentioned property

Erf 121 Sea View
in the City of Cape Town, Division Cape Town, Province Western Cape
Measuring 1 800 (one eight nil nil) square metres
Held by Deed of Transfer No T765/1980

Subject to the following condition contained in clause 7 of the said deed of sale signed at Cape Town on 2 February 1988, namely:-

The herein mentioned property is subject to a life-long right of habitatio in favour of Hester Smalberger, Identity number 461111 0023 08 2, widow

And generally for effecting the purpose aforesaid, to do or cause to be done whatsoever shall be required as fully and effectually as we could have done if personally present and acting herein.

Signed at Cape Town on 9 May 2007.

As Witnesses:

1	_____	_____
		Otto Klar
2	_____	_____
		Hester Smalberger

[15]

6.2 Documents to be lodged at the Deeds Registry

- a) **Deed of transfer**
- b) **Title deed**
- c) **Power of attorney**, bearing the Master's endorsement in terms of **section 42(2)** of the Administration of Estate Act 66 of 1965
- d) **Transfer duty receipt**
- e) **Rates clearance certificate**
- f) **Death notice** of Johanna Pienaar ¹²
- g) **Marriage certificate** of Jan Smalberger and his spouse ¹³ [3]

Documents to be retained on your office file

- a) **Identity documents** of all parties
- b) **Letters of executorship** for Jan Smalberger
- c) **Letters of executorship** for Johanna Pienaar
- d) **Copy of death notices** of Jan Smalberger and Johanna Pienaar
- e) **Affidavit by executor** of Jan Smalberger that to best of his belief the estate is not insolvent
- f) **Deeds office printout** of property
- g) **Deed of sale**
- h) **Marriage certificate** of Johanna & Gert Pienaar [3]

¹² To prove her death.

¹³ If the property is not registered in both their names.

Question 7 - Model answer

[35]

7.1

Prepared by me

Form O

CONVEYANCER
Frantzen E

Certificate of Consolidated Title

Issued under the provisions of Section 40 of the Deeds Registries Act 1937

WHEREAS Don Ferreira
Identity Number 550719 5160 08 8
Unmarried

has applied for the issue to him of a Certificate of Consolidated Title under the provisions of Section 40 of the Deeds Registries Act 1937; and

WHEREAS he is the registered owner of:

- 1 Portion 1 of the Farm Brandwag 101
Registration Division I.S., Province of Mpumalanga
Held by Deed of Grant No. T1074/1979
- 2 The Remainder of the farm The Glen 243
Registration Division I.S., Province of Mpumalanga
Held by Deed of Grant No T1074/1979
- 3 Portion 2 of the farm Rhodes 565
Registration Division i.S., Province of Mpumalanga
Held by Deed of Transfer T9712/1975

which have been consolidated into the land herein after described;

Now therefore, in pursuance of the provisions of the said Act, I the Registrar of Deeds at Pretoria do hereby certify that the said

Don Ferreira

Identity Number 550719 5160 08 8

Unmarried

his heirs, executors, administrators or assigns, is the registered owner of

The Farm Mielieland 505

Registration Division I.S., Province of Mpumalanga

Measuring 1 075 (one thousand and seventy five) hectares.

As will more fully appear from diagram SG No A678/2007 annexed hereto

Subject to the following conditions:¹⁴

- 1 That the portion of the property indicated by the figure AFEbaCBA on diagram SG No A 678/2007 is subject to a reservation of rights to gold, silver, precious stones and natural oils in favour of the State, which mineral rights were created in Deed of Grant No T 1074/1979.
- 2 A servitude of right of way 3 metres wide in favour of the Farm Avondstond 334, the middle line of which servitude is indicated by the line cd on diagram SG No A 678/2007.¹⁵
- 3 A servitude to a right of aqueduct in favour of the farm Avondstond 334, the middle line of which servitude is indicated by the line ef on diagram SG No A 678/2007.

And further subject to such conditions as are mentioned or referred to in the aforesaid deeds.¹⁶

AND by virtue of these presents the said Don Ferreira his heirs executors, administrators 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 cause the seal of office to be affixed thereto.

Thus done and executed at the Office of the Registrar of Deeds at Pretoria on this _____ day of _____

Registrar of Deeds

[25]

14 Cape students must remember to insert the **pivot deed clause**: e.g. "To the conditions referred to in Deed of Transfer T123/1969."

15 The whole consolidated land is subject to conditions 2 and 3. They are indicated by figures on the consolidation diagram and need no qualification.

16 The "General Conditions Clause". Candidates writing in Cape Town, Pieter Maritzburg and Bloemfontein must not insert this condition.

**Application and Consent in terms of Section 40(5)(a)
of Act 47 of 1937**

I, the undersigned
Don Ferreira
Identity Number 550719 5160 08 8
Unmarried

the owner, having applied for the issue of a Certificate of Consolidated Title in respect of

The Farm Mielieland 505
Registration Division I.S., Province of Mpumalanga
measuring 1075,000 (one thousand and seventy five comma nought nought nought)
hectares;

represented on Diagram SG No A 678/2007 comprising Portion 1 of the Farm Brandwag 101
and the remainder of the farm The Glen 243, mortgaged under mortgage bond B8517/1985
and the 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.

Dated at Nelspruit on 1 May 2007

As Witnesses:

1 _____

2 _____

Don Ferreira

And I,

Gerhard Sekoto duly authorised thereto by a resolution of the directors of Farm
Lending Bank Limited, No 1970/000026/06 the legal holder of the aforementioned
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.

Dated at Nelspruit on 9 May 2007

As Witnesses:

1 _____

2 _____

On behalf of Farm Lending Bank Limited

[10]

Question 8 - Model answer

[10]

This agreement is subject to the following suspensive condition, namely:-

That the purchaser is able to obtain approval of a loan by a Financial Deposit taking Institution, such loan to be secured by a first mortgage bond over the property, in accordance with the usual terms and conditions of loans for the relevant Institution.

The said loan shall be granted within 30 days of date hereof, for not less than R50 000,00. Should the loan not be granted within the period stipulated, this agreement shall lapse and be of no further force or effect.

The loan shall be deemed to have been approved, within the meaning of this clause:

- 1 if written advice to this effect is furnished by the said institution to the agent, purchaser or seller;
- 2 whether or not the institution has imposed conditions for the approval of the bond, relating to suretyships required, life insurance or any other condition.

The purchaser warrants that his income is sufficient to merit the approval of a loan for the amount stated above, and that he has obtained the consent of his spouse, if applicable in terms of Section 15(2)(a), (b) and (h) of the Matrimonial Property Act 88 of 1984.

Question 9 - Model answer

[20]

9.1 The Farm Matjiesfontein 108

District Reitz, Province Free State

measuring 111,0000 (one hundred and eleven comma nil nil nil nil) hectares

Held by Deed of Transfer No T1234/1980

Subject to the conditions referred to in the aforesaid deed and especially subject to a usufruct in favour of Linda Wally, identity number 491212 0073 08 2, widow, preference in respect of which is waived as set out below [7]

9.2 Also appeared the said Ilse Pretorius she being duly authorised thereto by a power of attorney dated 9 May 2007 at Bloemfontein and granted to her by Linda Wally, identity number 491212 0073 08 2, widow;

And the said appearer on behalf of her said principal declared to waive, as she hereby waives, in favour of this mortgage bond, the usufruct over the said property held by her principal by virtue of Notarial Deed of Cession of Usufruct No K472/1987S, to the intent that her said principal shall not at any time be in a position by virtue of such usufruct to compete with the said mortgagee, but in the event of the said property being sold in execution or in insolvency, the mortgagee shall have the right to have the property transferred to the purchaser thereof free from such usufruct and to have the whole of the proceeds of such sale shall be applied towards payment of such moneys as shall then be due and payable to the mortgagee under this bond as well as costs and interest due thereon. [13]

Question 10 - Model answer

[10]

10.1 And the appearer declared that -

WHEREAS in the matter wherein Jan Arm, identity number 650906 5532 08 8, unmarried, was the defendant and Best Bank Limited No 1965/012345/06 was the plaintiff, in Stellenbosch Magistrate's Court under case number 650/2006, the hereinafter mentioned property registered in the name of the said Jan Arm, was by virtue of a writ issued by the Magistrate Court for the District of Stellenbosch dated 25 April 2007 attached by the Sheriff of the Court and sold by public auction on 9 May 2007 to the undermentioned transferee. [5]

10.2 WHEREAS the undermentioned property is registered in the name of Frans Claerhout, identity number 360308 5032 08 8, unmarried, as fiduciary, who has died on 26 November 2006;

AND WHEREAS the undermentioned transferee as only fideicommissary is entitled to the undermentioned property in terms of the conditions of the will of the late Susan Claerhout dated 17 February 1975; [3]

10.3 WHEREAS the said David Botha, identity number 520932 5932 08 7, married in community of property to Mary Botha and with the consent of his wife, did on 10 April 2007 donate the hereinafter mentioned property to his son the hereinafter mentioned transferee, subject to the usufruct as more fully set out hereunder;¹⁷ [2]

TOTAL: [200]

17 Although the model answer of the examiners indicates that the donation was duly accepted by the transferee in writing on a certain date, this fact must only be contained in the causa if the donation took place before the commencement of the Alienation of Land Act on 19 October 1982, as the said act makes provision that no alienation of land (including a donation) is of any force or effect unless it is contained in a deed of alienation and signed by all the parties thereto.

Compiled by

Gawie le Roux

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

and

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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

Model Answers to the Conveyancing Examination

May 2007

Part 2

Self-Study Deeds Course

Question 1 - Model answer

[8]

Transfer may still be passed from A to B. A and C, irrespective of the award in the divorce agreement (settlement agreement) may decide after such agreement has been concluded to sell the property, in which case the property may be transferred to the purchaser without the title first being endorsed in terms of Section 45bis(1A) of the Deeds Registries Act. A and C can therefore enter into a redistribution (amended) agreement, agreeing to sell to B. The redistribution agreement may not affect the right of third parties. A certified copy of the divorce agreement (settlement agreement) must therefore be lodged so as to determine whether the interest of third parties are affected by the amending agreement. The signing by both parties of the power of attorney to pass transfer shall be accepted as sufficient proof of the amending agreement to the initial settlement agreement and therefore the amended agreement need not be lodged.

Certain deeds office officials may accept countersignature of the power of attorney as sufficient proof without the need to lodge a separate consent (in terms of Section 15(2) of the matrimonial Property Act 88 of 1984) by C. The redistribution agreement amending the initial settlement agreement duly countersigned by C can be lodged in lieu of the consent.

Question 2 - Model answer

[3]

Non-prejudice clauses are clauses usually insisted upon by a first bond holder (mortgagee) if the mortgagor wants a further bond to be registered over his property in favour of another mortgagee. The clause is contained in the second bond, in other words the further bond to be registered by the mortgagor in favour of another mortgagee. It is effectively an agreement and acknowledgement by the mortgagee of the second bond that his/her rights shall not infringe on the rights of the first mortgagee nor weaken the first mortgagee's rights.

Question 3 - Model answer

[1]

Yes.¹⁸

Question 4 - Model answer

[10]

- 4.1** "MAE / WOP" This abbreviation stands for "met ander eiendom" or "with other property". When a bond endorsement on a title deed bears this abbreviation on top of the endorsement, it means that it is not the only property mortgaged under that bond. There are other properties also mortgaged under the same mortgage bond. [2]
- 4.2** "I100/96AT" This is an attachment interdict. Where for example a person has fallen into arrears with his bond payments and the mortgagee has taken judgement against him, the property will be attached by the sheriff and cannot be disposed of until the attachment has been uplifted.¹⁹ [2]
- 4.3** "I100/89LG" This is a Surveyor General interdict. It is often seen where a property has been subdivided into 2 portions, leaving no remainder. Also with excisions in Gauteng. [2]
- 4.4** "I13/89CY" This is an interdict applicable to a company, for example where a company as opposed to a natural person has an interdict noted against it, such as a liquidation. [2]
- 4.5** "EX/ONT" This is an expropriation interdict indicating that there was an expropriation. It is imperative when drawing the deed in these circumstances to check whether or not the expropriation applies to the property you are transferring. If it does, your new deed must be made subject thereto. [2]

18 Registrar's Conference Resolution 7 of 1994.

19 The sheriff however, can dispose of the property (if it has been sold in execution) and in such an instance the attachment interdict must be noted against the property or the writ of execution must be lodged together with such transfer.

Question 5 - Model answer

[10]

- 5.1 A special resolution -
passed at a general meeting is a resolution passed by the majority of no less than three fourths of the votes (reckoned in value and number) of the members of the body corporate who are present or represented by proxy of which at least 30 days' written notice has been given, specifying the proposed resolution
OR
A resolution passed in writing by at least 75% of all the members of the body corporate reckoned in value and number. [2]
- 5.2 No [1]
- 5.3 No, but the majority of trustees must be owners²⁰ [2]
- 5.4 No²¹ [1]
- 5.5 The details of the land and buildings at ground level²² [1]
- 5.6 a) At the time of the first transfer of a unit in the scheme; and
b) Where provision is made for the separate rating of the units in a scheme. [2]
- 5.7 Yes, within 60 days after establishment of the body corporate.²³ [1]

Question 6 - Model answer

[5]

Ways in which a servitude may be terminated:²⁴

- 1 Lapse of time
- 2 Agreement to cancel
- 3 Waiver / abandonment
- 4 Merger
- 5 Impossibility
- 6 Prescription [5]

20 Management Rule 5.

21 Management Rule 5.

22 Regulation 5(2)(b) to the Sectional Titles Act.

23 Regulation 50(1).

24 Although the model answer provided by the examiners does not include the following, we are of the opinion that a servitude can also be terminated by the following, namely: 1) the **occurrence of a certain event**; 2) by **an order of court**; 3) by **Statute**.

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

- 7.1 Nil, as VAT is payable by the Vendor ²⁵ [2]
 7.2 Yes, R25 000,00 [2]
 7.3 R625,00, which is 10% of R25 000,00 for three completed months [2]

Question 8 - Model answer**[20]****Seller:**

Received	Purchase Price		200 000,00
Paid	Estate Agent's commission	10 000,00	
Received	Occupational rental 1-15 April		1 050,00
Received	Pro Rata rates & taxes refund 16 April - 30 June		750,00
	Balance due to you	191 800,00	
TOTAL		201 800,00	201 800,00

Purchaser:

Paid	Purchase Price	200 000,00	
Received	Deposit on purchase price		20 000,00
Received	Interest on investment		400,00
Paid	Our fee for registration of transfer	2 000,00	
Paid	VAT thereon	280,00	
Paid	Postages & petties	100,00	
Paid	VAT thereon	14,00	
Paid	Administration fee for clearance certificate	20,00	
Paid	Transfer Duty ²⁶	20 000,00	
Paid	Registrar of Deeds	115,00	
Paid	Occupational rental 1-15 April	1 050,00	
Paid	Pro rata rates & taxes 16 April -30 June	750,00	
Received	Estimated costs		25 000,00
Received	Payment of guarantee by ABC Bank		180 000,00
	balance due to you	1 071,00	
TOTAL		225 400,00	225 400,00

25 The question is not specific as to whether the seller is a VAT vendor **for purposes of the transaction**, as he could be a vendor, but not for purposes of the transaction and in such event transfer duty will be payable and not VAT.

26 In March 2004, legal entities and trusts had to pay transfer duty at a rate of 10% on the purchase price.

- 11.3 The deceased's wife, his child and adopted child will each receive a child's share being R160 000,00. The stepchild will not inherit from the deceased. [4]

Question 12 - Model answer [6]

Documents to be requested from the seller company:

- a) Certificate of Incorporation
- b) Certificate to commence business (if applicable)
- c) Memorandum and Articles of Association
- d) Certificate by the auditors of the company confirming that the memorandum and articles reflect all the amendments to date, that the company is still on the register of companies and reflecting the names of all of its current directors
- e) Certified copy of a resolution of the directors of the company authorising the sale and transfer as well as the signature of the transfer documents
- f) Proof that the sale and transfer does not constitute the disposal of the whole or greater part of the assets of the company - (Section 228 of the Companies Act). If this is the case a shareholder's resolution will be required also. If such shareholder resolution is not produced, ensure that the auditors certificate deals with this aspect or else obtain an affidavit from the director of the company confirming that there is no contravention with section 228.
- g) Identity document of the director who will act on behalf of the company

Question 13 - Model answer [5]

Documents to be lodged:

- a) **Written application** by the registered owner of the land in terms of section 68 of the Deeds Registries Act
- b) **Existing Title Deed of the land**
- c) **Existing Title Deed of the servitude**, if there is a separate title deed and the usufruct has lapsed for any reason other than death
- d) **Proof of lapse** of servitude
- e) **Transfer duty** receipt or transfer duty exemption certificate

TOTAL: [100]