

Model Answers to the Conveyancing Examination

May 2008

Part 1

Self-Study Deeds Course

Question 1 - Model answer

[25]

1.1 Purchaser: Mad Max

Paid	Purchase Price	800 000,00	
Received	Deposit on purchase price		110 000,00
Received	Guarantees for purchase price		684 000,00
Paid	Our fee for registration of transfer	8 400,00	
Paid	VAT thereon	1 176,00	
Paid	Deed Office Fees	400,00	
Paid	Transfer Duty ¹	15 000,00	
Received	Transfer Duty		15 000,00
Paid	Occupational rental ½/2008-30/4/2008 (3 months x R8000)	24 000,00	
Paid	Levies ½/2008-30/6/2008 (5 months x R1000)	5 000,00	
Paid	Admin fee: Levy clearance certificate	1 000,00	
Paid	Electrical Compliance Certificate	1 500,00	
Total		856 476,00	
	balance owed by you	(47 476,00)	
Balances		809 000,00	809 000,00

[20]

1 Transfer duty for a natural person is calculated by multiplying the amount above R500 000,00 with 5%. Thus: R300 000,00 x 5% = R15 000,00. Nothing of the purchase price is above R1 000 000,00 to be multiplied with 8%.

1.2 I will not proceed with registration, but immediately contact the purchaser and advise him that the matter is on prep and fax the reconciliation statement through to him wherein it is indicated that his payments to date are inadequate to cover the transfer costs. I will inform him that he must immediately pay the shortfall into our trust account (electronically or in cash) so that I would know that the said amount will be immediately available. I would arrange with our prep clerk to make arrangements for holding the transaction over on preparation until such time as I notify her that she can proceed with letting it go to execution. I would advise the bond attorneys, bond cancellation attorneys, seller and purchaser that the matter is being held over. I can proceed to register the transaction once I have received the shortfall. [5]

Question 2 - Model answer [50]

2.1.1 We, the undersigned,

1 Ann Penn
Identity Number 510701 0017 08 8
married to George Penn, which marriage is governed by the laws of Zambia,
duly assisted by my spouse as far as needs be

2 Mavis Ball
Identity Number 470107 0012 08 3
divorced² [6]

2.1.2 The joint estate of the Late Mad Max
Estate Number 1234/2008
and his surviving spouse
Cecilia Max
Identity Number 430615 0910 00 8
widow
their heirs, executors, administrators or assigns [6]

2.1.3 Portion 1 of Erf 12 Douglasdale Township
Registration Division J.R., Province of Gauteng
Measuring 800 (eight hundred) square metres

As will appear from annexed diagram S.G. No 3/2006 and held by Deed of Transfer
T1/2005³ [8]

2 Or "unmarried".

3 As this is a newly surveyed piece of land that has never formerly been registered as an entity on its own, form TT is used.

CONVEYANCER
Le Roux G J

Power of Attorney and Agreement to Partition Land ⁴

We, the undersigned,

- 1 Ann Penn
Identity Number 510701 0017 08 8
married to George Penn, which marriage is governed by the laws of Zambia,
duly assisted by my spouse as far as needs be
- 2 Mavis Ball
Identity Number 470107 0012 08 3
divorced

being the joint owners of -

The remaining Extent of Erf 12 Douglasdale Township
Registration Division J.R., Province of Gauteng
Measuring 1 200 (one thousand two hundred) ⁵ square metres

Held by Deed of Transfer T1/2005 ⁶

do hereby declare that we have agreed to partition the said property by subdividing it according to our respective interest therein and allocating to each of us a defined portion thereof as set out hereunder

AND that we hereby nominate constitute and appoint

Gabriel Jacobus le Roux and/or Erinda Frantzen

with power of substitution to be my lawful attorney and agent to transfer the sub-divided portions to us in severalty as follows, namely:-

-
- 4 See **Examples 8 A and 8 E** in Part 4 of Self-Study Deeds Course for Attorneys.
 - 5 The total extent of Erf 12 Douglasdale (2 000 sqm) less the extent of portion 1 (800 sqm) gives 1 200 square metres.
 - 6 The remaining extent and portion 2 are still held by this deed of transfer.

1 Allocated to Mavis Ball
Identity Number 470107 0012 08 3
divorced

the following property, namely -

Portion 2 of Erf 12 Douglasdale Township
Registration Division J.R., Province of Gauteng
Measuring 600 (six hundred) square metres

As shown on diagram S.G. No 4/2006 and held by Deed of Transfer
T1/2005

2 Allocated to Ann Penn
Identity Number 510701 0017 08 8
married which marriage is governed by the law of Zambia

the following property, namely -

Remaining Extent of Erf 12 Douglasdale Township
Registration Division J.R., Province of Gauteng
Measuring 600 (six hundred) ⁷ square metres

Held by Deed of Transfer T1/2005 ⁸

And we do hereby declare that neither we nor any other persons on our behalf received or paid any consideration or any other form of compensation in respect of the partition and simultaneous transfer of the property.

Signed at Pretoria on 14 May 2008

As Witnesses:

1 _____

Ann Penn duly assisted
by my spouse

2 _____

George Penn

Mavis Ball
[30]

7 The extent of the remainder and the extent of portion 2 (1 200 sqm) less the extent of portion 2 of Erf 12 Douglasdale (600 sqm) gives 600 square metres.

8 There is no diagram for the remaining extent. The mother diagram less portions 1 and 2 give the remaining extent.

3.1

Prepared by me

CONVEYANCER

Le Roux GJ

**Application in terms of Section 40
of the Deeds Registries Act 47 of 1937⁹**

I, the undersigned

Alice Wonderland, in my capacity as trustee and duly authorised thereto by virtue of a resolution by the Trustees of the ABC Trust
Registration number IT8183/2005
acting under letters of appointment issued by the Master of the High Court of South Africa (Cape of Good Hope) at Cape Town on 3 March 2005

do hereby apply in terms of section 40 of the Deeds Registries Act 47 of 1937 to the Registrar of Deeds at Cape Town, for the issue to the Trustees of a Certificate of Consolidated Title in respect of –

- 1) Erf 123 Belville
situated in the City of Cape Town, Cape Division, Province Western Cape
in extent 1000 (one thousand) square metres
Held by deed of transfer T1/2007
and
- 2) Erf 124 Belville
situated in the City of Cape Town, Cape Division, Province Western Cape
in extent 1 500 (one thousand five hundred) square metres
Held by deed of transfer T 2/2007

which properties on consolidation will be known as –

Erf 625 Belville
situated in the City of Cape Town, Cape Division, Province Western Cape
in extent 2 500 (two thousand five hundred) square metres
as will appear from diagram S.G. No. 55/2008.

Signed at Cape Town on this 14 May 2008.

On behalf of the trustees of ABC Trust

[10]

⁹ See **Example 9 B** in Part 4 of Self -Study Deeds Course for Attorneys.

CERTIFICATE OF CONSOLIDATED TITLE ¹⁰

WHEREAS -

The trustees of the ABC Trust

Registration number IT8183/2005

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

AND WHEREAS they are the registered owners of:

- 1) Erf 123 Belville
situated in the City of Cape Town, Cape Division, Province Western Cape
Held by deed of transfer T1/2007
and
- 2) Erf 124 Belville
situated in the City of Cape Town, Cape Division, Province Western Cape
Held by deed of transfer No. 2/2007

which have been consolidated into the land hereinafter described.

¹⁰ This certificate is drafted in accordance with form O. Also see **Example 9 D** in Part 4 of Self-Study Deeds Course for Attorneys.

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

The trustees of the ABC Trust
Registration number IT8183/2005

their successors in office or assigns, are the registered owners of

Erf 625 Belville
situated in the City of Cape Town, Cape Division, Province Western Cape
in extent 2 500 (two thousand five hundred) square metres
as will appear from diagram S.G. No. 55/2008 annexed hereto.

-2-

The property held hereunder is subject to the following conditions:

- 1 No trade or business in wine, spirits or beer shall be carried on on the said property. ¹¹
- 2 The former Erf 123 Belville township depicted by the figure AabD on the attached diagram SG No. 55/2008 is subject to the following conditions: - ¹²
 - a) Subject to a 2 metres wide servitude for municipal purposes in favour of the Belville Local Municipality together with ancillary rights, the centre line of which servitude is indicated by the line vx on annexed diagram S.G. No 55/2008 as will more fully appear from Notarial Deed No. K44/2006S, with diagram annexed thereto.
 - b) The property may not be transferred without the written consent of the Local Authority. ¹³
- 3 The former Erf 124 Belville township depicted by the figure aBCb on the attached diagram SG No. 55/2008 is subject to the following condition:

Subject to a 5 metres wide right of way servitude in favour of Highbrow Holdings (Proprietary) Limited, the centre line of which servitude is indicated by the line BC on annexed diagram S.G. No. 55/2008, as will more fully appear from Notarial Deed No. K100/2006S, with diagram annexed thereto ¹⁴

And further subject to such conditions as are mentioned or referred to in the aforesaid deeds. ¹⁵

-
- 11 As the two individual components are subject to the same condition, this condition is quoted only once, without any qualification.
 - 12 Or - "That portion of the property, indicated by the figure AabD on diagram S.G. No. 55/2008 is subject to the following conditions:..."
 - 13 As these two conditions, 2 (a) & (b), are only applicable to one of the components and not both, they must be qualified with reference to the figure on the consolidation diagram whereby the component is indicated.
 - 14 The same principles as in footnote 13 are also applicable here.
 - 15 This general conditional clause is not applicable in the deeds registries for Cape Town, Pietermaritzburg and Bloemfontein.

AND THAT by virtue of these presents, the said trustees of the ABC Trust, their successors in office or assigns, now is and henceforth shall be entitled thereto conformably to local custom, the State, however, reserves 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 Cape Town on this ___ day of _____.

Registrar of Deeds
[30]

Question 4 - Model answer

[10]

- 4.1** According to Registrar's Conference Resolution 49 of 2005 as amended by RCR 2/2006¹⁶, section 27(4)(b) and 27(4)(c) provide the procedure to be followed, namely:- If the holder of the real right of exclusive use area is no longer a member of the body corporate, the exclusive use area vests in the body corporate (free from any mortgage bond). Such a holder will cease to be a member of the body corporate when he ceases to be the owner of a unit in the scheme. The body corporate must thereafter apply at the Registrar of Deeds for the issue of a certificate of real right of exclusive use area whereafter the exclusive use area can be ceded to the latest owner of the unit. [6]
- 4.2** Yes, it will make a difference. The holder of the real right is still a member of the body corporate as he is still the owner of a unit in the scheme and therefor the real right still vests in him and not in the body corporate. The provisions of section 14 read in conjunction with section 33 of the Deeds Registries Act must be adhered to. Cession of the exclusive use area should therefor then take place from A to B to C until the last person entitled to the exclusive use area - (section 14). If a person is unable to procure registration of the cession of exclusive use area, he may apply to court by petition for an order authorizing the registration (cession) in his name of such property (exclusive use area) - Section 33. [4]

16 It is not necessary to quote the number and year of the resolution.

5.1

Prepared by me

CONVEYANCER
Le Roux G J

Power of Attorney to pass transfer¹⁷

We, the undersigned,

- 1 Bo Brummel
Identity Number 750106 5054 08 8
married out of community of property
(as bare dominium owner)

- 2 John Brummel
Identity Number 451018 5092 00 1
married, which marriage is governed by the laws of Engalnd
(as usufructuary)¹⁸

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 said Transferors have truly and legally on 15 April 2007 sold their respective interests in undermentioned property to the undermentioned transferee for the amount of R1 800 000,00 (one million eight hundred thousand rand), subject to the conditions as are more fully set out hereunder

NOW THEREFORE we hereby authorise the appearer to transfer to

The trustees of the Bella Trust
Registration number IT 123/2005

the following property, namely:

Portion 1 of the Farm Rome 333
Registration Division I R, Province Gauteng
Measuring 1 000,0000 (one thousand comma nil nil nil nil) hectares
As will appear from diagram S.G. No 321/2005 and held by Deed of Transfer T4321/1996

17 See Question 6 of May 2007 (Part 1) & Question 6 of September 2007 (Part 1)

18 In terms of section 17(6) of the Deeds Registries Act the assistance of the spouse is required of people where the legal consequences of their marriage is governed by the laws of another country, unless the Registrar deems it unnecessary (in terms of the Deeds Registries Act or on any other grounds). The community of property is however excluded by common law in respect of a usufructuary. Therefor it is submitted that the assistance of the spouse of the usufructuary is not necessary.

Subject to the following conditions set out in the deed of sale dated 15 April 2007, namely –

- 1 Subject to a right of pre-emption in favour of Bo Brummel, Identity Number 750106 5054 08 8, married out of community of property and John Brummel, Identity Number 451018 5092 001, married which marriage is governed by the laws of England. When first offering the herein mentioned property to the said transferors, such offer is to remain open for at least 5 (five) days. Should the property at any time be offered to a third party at a lower price than that offered to the said transferors, it may only be done after first having offered it again to the transferors for that lower price. In such an instance the provisions of this paragraph shall also apply to such offer.
- 2 Subject to a servitude of right of way, 10 metres wide, the centre line of which servitude is indicated by the line ab on diagram S.G. No. 321/2005, in favour of
The Remaining Extent of the Farm Rome 333
Registration Division I.R., Province of Gauteng
Measuring 1000,0000 (one thousand comma nil nil nil nil) hectares
Held by Deed of Transfer T4321/1996

Signed at Pretoria on this the 14 th day of May 2008

As Witnesses:

1 _____
2 _____

_____ Bo Brummel
_____ John Brummel
[20]

5.2 R144 000,00 ¹⁹ [2]

5.3 Bo Brummel must first obtain the consent of the High Court ²⁰ (in terms of section 80bis of the Administration of Estates Act 66 of 1965) for the sale of the property. An application to the high court must therefor first be brought for such consent and a certified copy of the court order must be lodged together with the rest of the transfer documentation in the deeds office. Further, Bo Brummel would have to be assisted by both his parents and natural guardians when entering into the deed of sale and when signing the subsequent transfer documentation. [3]

19 As the purchaser is a trust the transfer duty is calculated at 8% of the purchase price.

20 As the value of the property is more than R100 000,00, the consent of the High Court and not of the Master, is required.

Application under section 11(1)
of the Sectional Titles Act, 1986

I, the undersigned

Willem Hermanus Coetzer
in my capacity as director and duly authorised thereto by virtue of a resolution of the
board of directors of
Pineslopes Erf 6 (Proprietary) Limited
Registration number 2000/000023/07

hereby apply to the Registrar of Deeds at **Johannesburg** for:

- 1 the opening of a sectional title register in terms of the provisions of Section 12(1)(b) of the Sectional Titles Act, 1986, and the registration of the attached sectional plan in terms of Section 12(1)(a) of the aforesaid Act, in respect of the scheme known as **Folkestone Down** S.G. No. **D1218/2007** and held under Deed of Transfer No. **T5/2005**;
- 2 the issue of certificates of registered sectional title in terms of the provisions of section 12(1)(d) of the aforesaid Act in respect of the sections shown on the said sectional plan;
- 3 the issue of a certificate of real right in terms of the provisions of section 12(1)(e) of the aforesaid Act in respect of any reservation in terms of section 25(1);
- 4 the issue of a certificate of real right in terms of the provisions of section 12(1)(f) of the aforesaid Act in respect of the right of exclusive use referred to in section 27(1).

Signed at Johannesburg on 14 May 2008.

On behalf of Pineslopes Erf 6 (Pty) Ltd
[10]

**6.2 Schedule of Conditions under Section 11(3)(b)
of the Sectional Titles Act, no 95 of 1986**

SECTIONAL PLAN : SG. No. D1218/2007

NAME OF SCHEME: Folkestone Down

NAME AND ADDRESS
OF THE DEVELOPER Pineslopes Erf 6 (Proprietary) Limited
Registration number 2000/000023/07
of 57 Katjeepering Avenue
WONDERBOOM
0182

NUMBER OF THE TITLE DEED OF THE
LAND CONCERNED: T5/2005

NUMBER OF THE TITLE WHERE THE
DIAGRAM IS FILED Diagram S.G. No 285/2001 is filed with
T357/2001

I the undersigned

Erinda Frantzen

a conveyancer, practising as such in Pretoria, do hereby certify that the property known as –

Erf 1057 Paulshof Extension 68 Township
Registration Division JR, Province of Gauteng
Measuring 10 000 (Ten thousand) square metres

Held by Deed of Transfer T5/2005

is subject or entitled to the following conditions:

- A (1-5)
- B (1-3)
- C (1-4)

Subject further to all such conditions as are mentioned or referred to in the aforesaid deed ²¹

²¹ This general condition clause is inserted in all deeds registries, except Cape Town, Pietermaritzburg and Bloemfontein.

D The developer has reserved itself and its successors in title the right to erect and complete further buildings on parts of the common property and/or a vertical extension and/or a horizontal extension of an existing building, ²² from time to time for his personal account but within a period of 5 years from the date on which the sectional title register is opened, in terms of section 25(1) of the Sectional Titles Act.

E The developer has further imposed the following conditions in terms of section 11(2) of the Sectional Titles Act No. 95 of 1986, namely:-²³

- 1 The owner of **section 1** shall be entitled to the exclusive use, occupation and enjoyment of the area marked **G1 (Garden)**, measuring 50 (fifty) square metres, indicated on page 3 of the sectional plan to the exclusion of the rights of all the other owners.
- 2 The owner of **section 2** shall be entitled to the exclusive use, occupation and enjoyment of the area marked **G2 (Garden)**, measuring 50 (fifty) square metres, indicated on page 3 of the sectional plan to the exclusion of the rights of all the other owners.
- 3 The owner of **section 3** shall be entitled to the exclusive use, occupation and enjoyment of the area marked **G3 (Garden)**, measuring 50 (fifty) square metres, indicated on page 3 of the sectional plan to the exclusion of the rights of all the other owners.
- 4 The owner of **section 4** shall be entitled to the exclusive use, occupation and enjoyment of the area marked **G4 (Garden)**, measuring 50 (fifty) square metres, indicated on page 3 of the sectional plan to the exclusion of the rights of all the other owners.

F No further conditions were imposed by the Developer.

Signed at Pretoria on 14 May 2008.

CONVEYANCER

[18]

22 Only one of these extensions or more than one should be inserted here, in accordance with what the developer is planning to do.

23 Another way in which this paragraph could have been worded is:

The Developer has conferred, in terms of Section 11(2) of the Sectional Titles Act, 1986, read with Section 27 of the said act, the right to the exclusive use of the following parts of the common property, delineated for this purpose on the sectional plans, namely:-

No.	Exclusive Use Area	Exclusive Use No	Square metres
1.	Garden G1	50 (fifty)	
2.	Garden G2	50 (fifty)	
3.	Garden G3	50(fifty)	
4.	Garden G4	50(fifty)	

- 6.3**
- 1 Two copies of the **sectional plan**, approved by the Surveyor-General;
 - 2 **Schedule of conditions** certified by a conveyancer in terms of section 11(3)(b) of the Sectional Titles Act;
 - 3 Current **title deed**, Deed of Transfer T5/2005;
 - 4 Any current **mortgage bond** to which the property is subject to;
 - 5 **Consent by the mortgagee** to the opening of the sectional title register;
 - 6 **Certificate by a conveyancer** regarding the management and conduct rules prescribed in terms of section 35(2);
 - 7 **Certificate of real right of extension** of a scheme;
 - 8 **Certificate of real right of exclusive use areas**;
 - 9 **Certificates of registered sectional title** for each unit;
 - 10 **Plans** referred to in section 25(2)(a) & (b);
 - 11 A **schedule indicating the estimated participation quotas** of all the sections in the scheme after such section or sections have been added to the scheme;
 - 12 Particulars of any substantial **difference between the materials** to be used in the construction of the building(s) to be erected and those used in the construction of the existing building(s);
 - 13 Particulars of applicable **expenses specified in section 37(1)(a)** which shall be borne by the developer from the date of establishment of the body corporate until the sectional plan of extension has been registered.

[12]

Consent to opening of Sectional Title Register

by virtue of the provisions of section 11(3)(d)
of the Sectional Titles Act 95 of 1986

I, the undersigned

Dishonest Crook

in my capacity as signing official of Skelm Bank Limited, Registration number
1985/123456/06, duly authorised thereto by virtue of a resolution

the said bank being the legal holder of-

Mortgage Bond Nr B777/2005

passed by

Pineslopes Erf 6 (Proprietary) Limited
Registration number 2000/000023/07

in favour of

Skelm Bank Limited
Registration number 1985/123456/06

for the sum of

R10 000 000,00 (ten million rand) and an
additional amount of R2 000 000,00 (two million
rand);

DO HEREBY CONSENT TO:

- 1 **The opening of a sectional title register.**

- 2 **The registration of the sectional plan** in respect of the scheme known as
Folkestone Down situate at -
 - Erf 1057 Paulshof Extension 68 Township
 - Registration division JR, Province of Gauteng
 - Measuring 10 0000 (ten thousand) square metres
 - Held under Deed of Transfer T5/2005

3 The **endorsement of the said mortgage bond** to the effect that it attaches to –

- i) the sections and common property shown on the sectional plan;
- ii) the certificate of real right in respect of a right reserved by the developer in terms of section 25(1); and
- iii) the certificate of real right in respect of rights of exclusive use as contemplated in section 27(1).

Signed at PRETORIA on the 20 May 2008.

As Witnesses: 1 _____

Dishonest Crook

2 _____

[10]

TOTAL: [200]

Model Answers to the Conveyancing Examination

May 2008

Part 2

Self-Study Deeds Course

Question 1 - Model answer [8]

- 1.1 An error in
- the name or description of a person
 - the name or description of the property or
 - the conditions affecting any such property [3]
- 1.2 Yes, there will be no transfer of a right taking place with the application in terms of section 4(1)(b).²⁴ [2]
- 1.3 Yes, it would make a difference. The Subdivision of Agricultural Land Act 70 of 1970 provides that no undivided share in agricultural land not already held by any person, shall be transferred to any person. In other words X and Y may not receive transfer of the property (from one entity who owns the whole property) if they were married out of community of property. There cannot be a section 4(1)(b) application in this instance in terms of CRC 3 of 1994. [3]

Question 2 - Model answer [7]

- 2.1 Yes, a transfer duty receipt or transfer duty exemption certificate must be lodged in all instances where a personal servitude has lapsed or is cancelled (either in terms of section 68(1) or 68(2)), except if the servitude has served its time.²⁵ [2]
- 2.2 I will lodge an application, signed by the registered owner of the property, in terms of section 68 of the Deeds Registries Act for the noting of the lapsing of the usufruct. I will also lodge a death certificate or death notice as proof of death. An endorsement to that effect will then be attached to the title deed. [3]
- 2.3 No, it is not necessary, as the usufruct has lapsed through the passage of time in other words the usufruct has served its time. [2]

²⁴ Chief Registrar Circular 3 of 1994.

²⁵ Registrar's Conference Resolution 5 of 2005.

Question 3 - Model answer

[6]

It can be re-vested in the insolvent-

➤ *Automatic rehabilitation*

An insolvent is automatically rehabilitated after a period of 10 years since his sequestration, if he has not been rehabilitated by the court before such time. No registration act in the deeds registry is necessary, as the Registrar of Deeds will of his own accord remove from his records any sequestration order after elapse of ten years.

➤ *Composition* (that must be accepted by his creditors);

In this instance Section 58(2) of the Deeds Registries Act must be invoked. The insolvent may not deal (transfer mortgage or otherwise deal) with any property that has previously vested in the trustee unless the property has been restored to him in terms of section 58(2), by means of an endorsement. The following documents must be lodged in the deeds registry, namely:-

- a) Application for endorsement by the trustee or insolvent
- b) A copy of the offer of composition, accepted by the creditors and certified by the Master to the effect that it was accepted by the creditors - Some deeds offices require that the Master issue a certificate to the effect that the offer of composition has been accepted by the creditors
- c) All the title deeds that have to be lodged for endorsement
- d) Any bond over the property needs not to be lodged and the consent of the mortgagee is therefor not necessary.

➤ *Court Order*

If both the trustee and the creditors, with full knowledge that the property has vested in the trustee, do not lay any claim to such property, the court, on rehabilitating the insolvent or after rehabilitation may make an order declaring the rehabilitated insolvent entitled to the property. The rehabilitated insolvent may not deal (transfer, mortgage or otherwise deal) with such property unless it has transferred by the trustee to the rehabilitated insolvent by means of a deed of transfer in terms of section 58(1) of the Deeds Registries Act.

Question 4 - Model answer

[6]

4.1 A praedial servitude lapses by merger if the owner of the dominant tenement also becomes the owner of the servient tenement or vice versa. [2]

4.2 No, the registrar will not record the merger in this instance. If the lapsing of a praedial servitude is not recorded against the title deeds of the respective properties, there is a presumption that such unnoted servitude is revived by the inclusion in any subsequent title deeds after the de facto merger occurred. ²⁶ [4]

26 Du Toit vs Visser & Another 1950 (2) SA 93 (C) on pp 102-103; Consolidated Practice Manuals of the Deeds Office of South Africa, Juta Cape Town Revision Service 1, 2007, p. 3-34

Question 5 - Model answer

[6]

5.1 No. An external company may not deal with or take transfer of immovable property, unless -

- the external company has established a place of business (the acquisition of immovable property can be seen as the establishment of a business); and
- its memorandum and articles of association have been registered within 21 days from such establishment of a business; and
- a registration number has been allocated to such company. ²⁷ [3]

5.2 Yes. The Companies Act only prohibits the **dealing** with immovable property and the taking of transfer of property by an external company, unless the conditions in 5.1 above have been complied with. There is no prohibition against and/or requirements for the registration of a mortgage bond **in favour of an external company**. The **mortgagor** is the owner of the property, who may not deal with the property but the **mortgagee** does not become the owner of the immovable property by virtue of the registration of the mortgage bond. ²⁸ [3]

Question 6 - Model answer

[6]

6.1 A kustingsbrief is a bond registered by the purchaser of immovable property in favour of the seller to ensure the payment of the purchase price or the balance thereof. It can also be registered in favour of a third party, who advances money for the purchase of the property. It is registered simultaneously with the transfer of such immovable property to the purchaser. [2]

6.2 Yes it can also be registered in favour of a third person on condition that the cause of debt is for the “payment of the purchase price” or for the “balance of the purchase price” of the property. (*Explanatory note: The classic kustingsbrief is registered in favour of the seller of a property, but the modern kustingsbrief can also be registered in favour of a third party, who gives the loan amount for the purchase price*). [2]

6.3 Yes, it can rank as a second bond as long as the second bond is registered simultaneously with the transfer of the property into the name of the purchaser - (in other words simultaneously with the first mortgage bond). ²⁹. [2]

27 Section 1 and section 342(2) of the Companies Act and Registrar’s Conference Resolution 13 of 1991.

28 See Registrar’s Conference Resolution 13/1991 with the opinion attached thereto.

29 Registrar’s Conference Resolution 8 of 1987.

Question 7 - Model answer [6]

- 7.1 EX 421/2001 The property against which this endorsement is noted, or a portion of such property, has been expropriated [1]
- 7.2 VA T489/2004 A certified copy of the original title deed, which was lost or destroyed has been issued [1]
- 7.3 I 782/2006AT The property against which this interdict is recorded, has been attached by a sheriff, in anticipation of a sale in execution [1]
- 7.4 K 123/2007S A notarial deed of servitude has been registered, which servitude affects the property against which this endorsement has been noted [1]
- 7.5 BN 891/2003 This refers to a notarial bond that has been registered by the person against whose name the endorsement is noted [1]
- 7.6 B 246/2006AL A contract as defined in the Alienation of Land Act, for the purchase of land on installments (in more than two installments over a period of more than one year) has been recorded against this property [1]

Question 8 - Model answer [8]

- 8.1 **A unit** is a section together with its undivided share in the common property apportioned to that section in accordance with the quota of the section [2]
- 8.2 **A section** means a section shown as such on a sectional plan [2]
- 8.3 **An exclusive use area** means part or parts of the common property for the exclusive use by the owner or owners of one or more sections [2]
- 8.4 **Participation quota** in relation to the section or the owner of a section, means the percentage (expressed to four decimal places) determined according to the following formulae:
- by dividing the floor area of the section, by the floor area of all the sections in the building(s) comprised in the scheme. [2]

Question 9 - Model answer [7]

- Two copies of the **sectional plan of extension of a section**
- **Sectional title deed** in respect of the section to be extended
- **Transfer duty receipt**
- **Certificate by a conveyancer** in terms of section 24(6)(d) of the Sectional Titles Act
- Sectional **mortgage bond** registered over the section
- **Consent of the mortgagee** to the registration of the sectional plan of extension of a section [3]

- 9.2** The conveyancer certificate shall state that
- there is not a deviation of more than **10 percent** in the participation quota of any section as a result of the extension; or
 - if there is a deviation of more than **10 percent**, that the mortgagee of each section in the scheme has consented to the registration of the section plan of extension of a section
- [4]

Question 10 - Model answer **[5]**

10.1 A certificate by the transferee that the provisions of any law in connection with the change of ownership in the land in consequence of expropriation or vesting, have been complied with - (section 31(4)(a)) of the Deeds Registries Act). [2]

10.2 An affidavit by the transferee that he has been unable to obtain possession of the title deed - (section 31(2)(b)). The registrar shall then endorse the registration duplicate in the deeds registry and if the original title deed is at any time lodged for any purpose, he shall make a similar endorsement thereon. [1]

10.3 No, the consent of the mortgagee is not required and the mortgage bond need not be lodged for disposal. [1]

10.4 Yes, it is necessary to lodge a clearance certificate. ³⁰ [1]

Question 11 - Model answer **[10]**

11.1 As will appear from General Plan S.G. No. 7404/2007 and held by Certificate of Consolidated Title T1234/1998. ³¹. [3]

11.2 First transferred and still held by Deed of Transfer T6789/2007 with General Plan S.G. No 7404/2007 relating thereto. ³² [3]

11.3 First transferred by Deed of Transfer T6789/2007 with General Plan S.G. No. 7404/2007 relating thereto and held by Deeds of Transfer T6789/2007 and T3456/2008. [4]

30 Registrar's Conference Resolution 1/2004 as confirmed by RCR 13/2005.

31 Form TT is used as this is a property which has not been held as an entity on its own.

32 Form UU adapted is used. It does not make a difference if only a share in the property is transferred.

Question 12 - Model answer

[5]

The notarial deed of encroachment must be signed by the body corporate and the registered owner of the neighbouring land. If the body corporate is not yet in existence, the developer must sign the notarial deed.³³ - (Registrar's Conference Resolution 55 of 2006). The mortgagee of the mortgage bond registered over the neighbouring land must consent to such registration.

Question 13 - Model answer

[8]

- 13.1** The suspension of a servitude comes into operation when the conditions of establishment (in which the suspension can be found) comes into operation. The conditions of establishment come into operation (in terms of section 33(4) of the DFA 67 of 1995) upon notice of the conditions being given by the designated officer in the Provincial Gazette or if a later stage is stated in the notice, from such later date. [2]
- 13.2** In terms of Section 34(3), a servitude or restrictive condition suspended by a condition of establishment of which notice has been given in terms of section 33(4) shall be removed when a subdivision register is opened in respect of the land in a development area. [2]
- 13.3** Yes, in terms of section 33(2)(j)(iv) of the Development Facilitation Act 67 of 1995, a tribunal may impose any condition of establishment relating to the question whether the provisions of any law requiring the approval of an authority for the subdivision of land shall apply in respect of a land development area, provided that a decision to suspend the application of a law shall be taken after the tribunal has afforded the relevant authority and any other interested person or body an opportunity to provide the tribunal with its views on the expedience of such decision in the circumstances. [2]
- 13.4** No, according to section 33(2)(j)(vi) of the Development Facilitation Act the provisions of the Restitution of Land Right Act are expressly excluded from suspension by a tribunal. [2]

Question 14 - Model answer

[12]

- 14.1** According Registrar's Conference Resolution 40 of 2007, the principles contained in section 38 of the Deeds Registries Act (the issue of a certificate of registered title where the title deed of the owner as well as of the deeds office is lost or destroyed) can be used. [2]

³³ In this instance a sectional plan of extension is to be registered and the inference can be made that the body corporate has come into existence, however it can not be excluded that the developer decided not to transfer any of the units in the first phase (or prior phases), in which instance a body corporate would not exist.

- 14.2** According to Registrar’s Conference Resolution 43 of 2007, a notarial variation agreement can be entered into between the body corporate and the developer, with the written consent of all the members of the body corporate as well as the written consent of the mortgagee of each unit in the scheme, failing the agreement or the obtaining of the consents, an order of court must be obtained.
Should a body corporate not be in existence, a section 4(1)(b) application in terms of the Deeds Registries Act may be lodged where a right has been reserved, from time to time, but no specific period has been stipulated in the condition [6]
- 14.3** Although the wording in Section 25(6A) is “Where **no** right of extension was reserved”, Registrar’s Conference Resolution 45 of 2007 makes provision that a real right of extension may be reserved prior to the establishment of the body corporate, provided application is made in terms of Section 68(1) of the Deeds Registries Act for the noting of the lapsing of the expired real right of extension. [4]

TOTAL: [100]

Compiled by

Erinda Frantzen

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

and

Gawie le Roux

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

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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

Fax: (012) 361-1108

Web site: www.aktepraktyk.co.za

SOURCES

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