

Model Answers to the Conveyancing Examination

September 2008

Part 1

Self-Study Deeds Course

Question 1 - Model answer

[40]

1.1 Amount on which transfer duty is calculated:

R1 500 000,00 - R200 000,00 = R1 300 000,00 = value immovable property

Transfer duty scales for a natural person:

R500 000,00 - R0,00 = R500 000,00 x 0% =R 0,00

R1 000 000,00 - R500 000,00 = R500 000,00 x 5% =R25 000,00

R1 300 000,00 - R1 000,00=R300 000,00 X 8% =R24 000,00

TOTAL transfer duty payable =R49 000,00

[5]

1.2 Seller: Pen Pauper

Received	Purchase Price		1 500 000,00
Paid	Agent's Commission	75 000,00	
Paid	Your contribution towards costs	10 000,00	
Paid	Fees of bond cancellation attorneys	1 050,00	
Paid	McCarthy Motors	90 000,00	
Paid	Redemption sum to Sneezy Bank	450 000,00	
Paid	Pro rata rates & taxes (1/12/08-30/04/2008)	5 000,00	
Received	Occupational rental for February 08		15 000,00
Received	Occupational rental for March 2008		15 000,00
Received	Occupational rental for April 2008		15 000,00
Paid	Occupational rental for February 08	15 000,00	
Paid	Occupational rental for March 2008	15 000,00	
Paid	Occupational rental for April 2008	15 000,00	
	balance owed to you	868 950,00	
Balances		1 545 000,00	1 545 000,00

1.2 Purchaser: Richie Rich

Paid	Purchase Price	1 500 000,00	
Received	Guarantees for purchase price		1 200 000,00
Paid	Our fee for registration of transfer	13 680,00	
Paid	Our fee for registration of bond	8 664,00	
Paid	Deed Office Fees for transfer	1 000,00	
Paid	Deeds Office Fees for bond	500,00	
Paid	Postage & Petties for transfer ¹	350,00	
Paid	Postage & Petties for bond	350,00	
Paid	Transfer Duty	49 000,00	
Received	Seller's contribution towards costs		10 000,00
Paid	Admin fee: for clearance certificate ²	50,00	
Received	Cash payment from yourself		500 000,00
Received	Interest on investment		7 500,00
Paid	Pro rata rates & taxes (1/05-31/05/2008)	1 000,00	
Paid	Occupational rental for Feb 2008	15 000,00	
Paid	Occupational rental for March 2008	15 000,00	
Paid	Occupational rental for April 2008	15 000,00	
Total		1 619 594,00	
	balance owed to you	97 906,00	
Balances		1 717 500,00	1 717 500,00

[35]

Question 2 - Model answer

[10]

- a) This agreement is subject to the suspensive condition that the purchaser is successful in selling another property of his, within 90 days after signature of this agreement, being Erf 12 Putfontein Township for a purchase price of not less than R1 000 000,00 (one million rand). The purchaser shall have in his sole and absolute discretion the choice to accept a lower purchase price for such property in which event this condition shall be deemed to be fulfilled.

1 The question is a bit unclear here, as it is not indicated whether the postage and petties include or exclude VAT.

2 We do not agree with the model answers of LEAD, that this amount should be debited against the seller's account. This amount forms part of transfer costs and must be paid by the purchaser.

- b) The sale of the purchaser's property shall not, in turn, be subject to the sale of any further properties or any other suspensive conditions other than those relating to mortgage bond financing of the purchaser's purchaser. These suspensive conditions relating to mortgage finance in the agreement of sale relating to the property in paragraph (a) above, must be fulfilled by no later than 28 days after signature thereof.
- c) The purchaser shall, within 5 (five) days of the sale of the property referred to in paragraph (a) above, provide the seller with a copy of such agreement.
- d) Transfer of the purchaser's property mentioned in paragraph (a) and the property sold in terms of this agreement shall be registered simultaneously.

Question 3 - Model answer

[20]

3.1

WHEREAS, in terms of the will dated 8 November 2001 of the late Jack Sithole, who died on 3 March 2007, he bequeathed all his immovable properties to his children, Larry Sithole, unmarried and Mavis Zwane married in community of property to John Zwane, born from his marriage with Jill Sithole to whom he was married in community of property;

AND WHEREAS the said Jill Sithole is entitled to one-half share in the undermentioned property due to her marriage in community of property to the deceased;

AND WHEREAS his said children have entered into a redistribution on 14 July 2008 of the immovable property in the estate, in terms whereof the second mentioned transferee is entitled to one-half share in the undermentioned property, subject to the exclusion of any community of property as more fully set out hereunder;

Now therefore the Appearer, in his/her capacity aforesaid, did, by these presents, cede and transfer to and on behalf of –

- 1 Jill Sithole
Identity Number: 400930 0034 08 2
unmarried
- 2 Mavis Zwane
Identity Number: 721201 0073 08 2
married in community of property with John Zwane, with exclusion of the community of property in respect of the property mentioned herein as a result of the stipulations contained in the will of the late Jack Sithole dated 8 November 2001³ [15]

³ Should only the one half share of the deceased be transferred and the causa suitably adapted, you would not have been penalized by the examiners - (see RCR 5/1999 and 5/2003).

3.2 Documents to be lodged at the deeds registry:

- 1 **Power of Attorney**
- 2 **Title deed**
- 3 **Transfer duty exemption certificate**
- 4 **Section 15B(3)(a)** conveyancer certificate
- 5 **Clearance certificate** for the unit
- 6 Copy of the **will, certified** by the Master and **endorsed** by the Master as accepted by him
- 7 **Section 42(1)** of the Administration of Estates Act conveyancer certificate
- 8 Certified copy of the **redistribution agreement** ⁴
- 9 **Proof of in community of property marriage** between the deceased and Jill Sithole [5]

Question 4 - Model answer

[35]

4.1

- The owners and holders of a right of extension, contemplated in section 25 of the Sectional Titles Act, may by **unanimous resolution** direct the body corporate on their behalf to alienate common property or any part thereof. A copy of the relevant resolution, certified by two trustees of the body corporate must be lodged together with the other documents.
- If the **whole right of extension** is affected by the alienation (as is the case here) such right **shall be cancelled** by the Registrar with the consent of the holder thereof on submission of the title to the right.
- Section 18 of the Sectional Titles Act provides amongst others that Section 56 and 57 of the Deeds Registries Act shall also be applicable to a transfer under section 17 (common property). Therefor, **the consent of all the bondholders** over undivided shares in the common property to either the cancellation of the bond or more likely to the release of the undivided share in that portion of the common property from the operation of the bond is required
- Section 17 (1) of the Sectional Titles Act requires compliance with any law relating to the subdivision of land and therefor the **consent of the local authority to subdivision** of the common property is required
- Section 17(3) of the Sectional Titles Act further requires a **diagram of that portion of the common property** to be transferred, approved by the Surveyor-General, to be annexed to the deed of transfer. [5]

4.2

See the answer to this question on the next page 6

4 Although the model answers of LEAD indicate that the redistribution agreement must be certified by the Master, the Consolidated Practice Manuals of the Deeds Office of South Africa , Juta Cape Town, revision service 2 2008, p. 1-158 indicates that it may also be certified by a conveyancer or a notary.

4.3 Documents to be lodged in the deeds registry-

- 1 Draft **deed of transfer**
- 2 **Power of attorney** to pass transfer
- 3 **Transfer duty** receipt
- 4 **Clearance certificate**
- 5 **Consent by the local authority to the subdivision** including the conditions of subdivision
- 6 **Certificate by the local authority** that the subdivisional conditions have been complied with
- 7 **Diagram** (in duplicate), approved by the Surveyor-General of the portion of the common property
- 8 A copy of the **unanimous resolution** certified by two trustees of the body corporate
- 9 **Certificate of real right of extension**
- 10 **Application in terms of Section 68(1)** of the Deeds Registries Act by the holder of the real right of extension to the cancellation thereof
- 11 **Consent by any bondholder** if there is a bond registered over the real right of extension to the cancellation thereof together with the mortgage bond ⁵
- 12 Consents by the bondholders in terms of section 56 or 57 of the Deeds Registries Act for the disposal in respect of the portion concerned
- 13 All the **mortgage bonds** registered over the units in the scheme [15]

⁵ Although the question stipulated that there is no bond registered over the real right of extension the model answers of LEAD still listed the consent as an item.

CONVEYANCER
Le Roux G J

Power of Attorney to pass transfer

I, the undersigned,

Irmin Henkel
in my capacity as trustee of the
Body Corporate of the Happy Days Scheme SS No. 163/1998
duly authorised thereto by virtue of a unanimous resolution taken by the body
corporate on 15 July 2008 at Pretoria

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

jointly and severally, each with power of substitution to be my lawful attorney and agent and
in my name place and stead to appear before the Registrar of Deeds at Pretoria and then
and there to pass transfer to

Magic View (Proprietary) Limited
Registration number 2000/001234/07

of the following property, namely:

Portion 1 of Erf 123 Moreletapark Township ⁶
Registration Division J.R., Province Gauteng
Measuring 2109 (two one nil nine) Square Metres

As will appear from diagram S.G. No 321/2008

which property has been sold on 2 February 2008 for the amount of R900 000,00 (nine
hundred thousand rand) to the said transferee.

Signed at Pretoria on this the 17 th day of September 2008

As Witnesses:

1 _____

_____ I Henkel obo the
Body Corporate of the Happy Days Scheme

2 _____

[15]

⁶ The property description will be in accordance with the subdivisinal diagram for that portion of the
common property being transferred.

Management Rules

The management rules appear in annexure 8 to the Sectional Titles Act. These rules may be substituted, added to, amended or repealed from time to time by the *unanimous resolution of the body corporate*, if at least 50 percent of the sections are owned by a person(s) other than the developer.

A unanimous resolution passed at a general meeting is

- a) a resolution passed unanimously by all the members of the body corporate who are present at a general meeting; and
- b) at which meeting at least 80 % of all the members (reckoned in value and number) are present;
- c) of which at least 30 days' written notice has been given;
- d) and in which the proposed unanimous resolution has been given.

Practical application.

For a unanimous resolution to be passed, at least 12 members⁸ (reckoned in number) and at least enough members holding 80% of the participation quota (reckoned in value) must be present. As the participation quota of all the members are the same, it means that 12 members shall constitute a quorum (reckoned in value and number). All 12 members must vote in favour of the unanimous resolution.

Conduct Rules

The conduct rules appear in annexure 9 to the Sectional Titles Act. These rules may be substituted, added to, amended or repealed from time to time by special resolution of the body corporate, provided that any conduct rule substituted, added to or amended, may not be irreconcilable with any prescribed management rule.

A special resolution passed at a general meeting is

- a) a resolution passed by the majority
- b) of no less than three-fourths of the votes (reckoned in value and number) of the members present or represented by proxy;
- c) of which at least 30 days' written notice has been given; and
- d) specifying the proposed resolution

Practical application

At least 9 members (75% reckoned in number and value) must be present and the majority thereof, in other words 5 members must vote in favour of the special resolution.

⁷ Also see Question 13 (part 1) of September 1999 for 9 marks.
⁸ That is 80% of 15 members.

General

If the management and/or conduct rules are added to, amended or repealed by the body corporate, the body corporate must lodge with the Registrar a notification of such amendment. This notification must be prepared in accordance with Vorm V and shall come into operation on the date of filing of the notification.

In terms of Section 32(4) of the Sectional Titles Act, the body corporate may by special resolution make rules under section 35 by which a different value is attached to the vote of the owner of any section, provided that no such change may be made until such time as there are owners, other than the developer of at least 30% of the units in the scheme. The owner who is adversely affected by such decision must consent in writing to this change.

Question 6 - Model answer

[30]

6.1

See the answer to question 6.1 on the next pages 9,10 & 11

6.2 The two banks must respectively consent to the release of one of the subdivided units from the operation of their respective mortgage bonds. Nedbank has to for example consent to the release of the newly subdivided unit 201 from the operation of its bond and ABSA Bank must in turn consent to the release of the newly subdivided unit 202 from the operation of its bond. Then the bond of Nedbank will remain over unit 202 and the ABSA Bank bond will remain over unit 201 as security for their respective bonds.

[6]

Application under section 22(1)⁹
of the Sectional Titles Act, 1986

We, the undersigned

Mandla Mekwe

Identity Number 750808 5432 08 7

and

Ben Burger

Identity Number 601215 5001 08 2

partners in a civil partnership in community of property registered in terms of the Civil Union Act 17 of 2006¹⁰

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

- 1 The registration of the attached sectional plan of subdivision of a section in terms of section 22(1) of the Sectional Titles Act, 1986, in respect of sections no. 201 and 202, formerly section no. 132 as shown and more fully described on sectional plan no. SS 111/2000 in the scheme known as The Waldorf in respect of the land and building or buildings situate at Parktown Extension 4 Township, Local Authority: City of Johannesburg and held under Deed of Transfer ST 951/2002;
- 2 The issue of certificates of registered sectional title in terms of the provisions of section 22 of the aforesaid Act in respect of the sections shown on the said sectional plan of subdivision.

Signed at Johannesburg on 17 September 2008.

Mandla Mekwe

Ben Burger
Prepared by me

⁹ Form O to the Sectional Titles Act is used. Also see Question 2, September 2007 (part 1).

¹⁰ The parties entered into a *civil partnership* and not a *marriage* and as they did not enter into an antenuptial agreement before entering into the civil partnership, they have a civil partnership in community of property. See Part 3, Chapter 27, "Civil Unions".

Consent ¹¹

I the undersigned

Jacob Pierneef
in my capacity as signing official and duly authorised thereto by virtue of a resolution
of the board of directors of
Nedbank Limited
Registration number 1960/000023/06

being the legal holder of the undermentioned mortgage bond, namely:-

Mortgage Bond No	B952/2007
Passed by	Mandla Mekwe Identity Number 750808 5432 08 7 and Ben Burger Identity Number 60 12 15 5001 08 2 partners in a civil partnership in community of property registered in terms of the Civil Union Act 17 of 2006
in favour of	Nedbank Limited Registration number 1960/000023/06
for the for the sum of	R400 000,00 (four hundred thousand rand)
And an additional sum of	R80 000,00 (eighty thousand rand)

do hereby consent to

- 1 the registration of the sectional plan of subdivision and the subdivision of section 132 into sections to be known as sections 201 and 202 in the scheme The Waldorf, subject to the abovementioned bond in accordance with Sectional Plan SS No. to be registered;
- 2 the issue of certificates of registered sectional title in respect of section 201 and 202 and the undivided share in the common property attached to such sections according to the participation quotas reflected on the said sectional plan; and
- 3 the substitution of the new sections in lieu of section 132 as security under the bond and the endorsement of the abovementioned bond to the effect that it attaches to the sections and common property as shown on the said sectional plan.

Signed at Johannesburg on 18 September 2008.

As witnesses:

1. _____

2. _____

¹¹ Form MM to the Deeds Registries Act is used.

Consent ¹²

I the undersigned

Maud Sumner

in my capacity as signing official and duly authorised thereto by virtue of a resolution of the board of directors of

ABSA Bank Limited

Registration number 1962/000523/06

being the legal holder of the undermentioned mortgage bond, namely:-

Mortgage Bond No

B7894/2007

Passed by

Mandla Mekwe

Identity Number 750808 5432 08 7 and

Ben Burger

Identity Number 60 12 15 5001 08 2

partners in a civil partnership in community of property registered in terms of the Civil Union Act 17 of 2006

in favour of

ABSA Bank Limited

Registration number 1962/000523/06

for the for the sum of

R300 000,00 (three hundred thousand rand)

And an additional sum of

R60 000,00 (sixty thousand rand)

do hereby consent to

- 1 the registration of the sectional plan of subdivision and the subdivision of section 132 into sections to be known as sections 201 and 202 in the scheme The Waldorf, subject to the abovementioned bond in accordance with Sectional Plan SS No. to be registered;
- 2 the issue of certificates of registered sectional title in respect of section 201 and 202 and the undivided share in the common property attached to such sections according to the participation quotas reflected on the said sectional plan; and
- 3 the substitution of the new sections in lieu of section 132 as security under the bond and the endorsement of the abovementioned bond to the effect that it attaches to the sections and common property as shown on the said sectional plan.

Signed at Johannesburg on 18 September 2008.

As witnesses:

1 _____

2 _____

[24]

¹² Although the two banks consent to the same thing, separate consents need to be drafted for each bond.

Question 7 - Model answer

[15]

7.1 Once a land development applicant has taken steps to establish a land development area, no person may conclude a contract (not even a contract that is subject to a suspensive or other condition) –

- a) for the sale, exchange, alienation or disposal in any manner of an erf in that land development area;
- b) for the erection of a dwelling on such erf;
- c) for the granting of an option to purchase or sell such erf or granting a right of first refusal in respect of such erf;
- d) to otherwise acquire such erf, unless-
 - i) the land development application has been approved; and
 - ii) the applicant has completed the steps for the land to become registrable or, to the extent that such steps have not been completed, the land development applicant has furnished the guarantees to the designated officer in respect of the completion for the steps required for the land to become registrable; or
 - iii) the tribunal has approved the commencement of a registration arrangement and the conditions imposed in respect of such approval have been complied with.¹³

Any contract entered into in contravention of the above shall be invalid¹⁴ [7]

7.2 Section 36(3) provides that the provisions of this section shall not prohibit the entering into of-

- a) a contract for the acquisition in any manner by any person of-
 - i) land on which he or she wishes to establish a development area subject to the condition that one or more of the erven therein shall be transferred to the seller;
 - ii) land in respect of which a land development application has been made, and such person notifies the designated officer in writing of his or her acquisition of the land and that he or she wishes to continue with such application;
- b) a contract between a land development applicant and a building contractor for the erection of a building on an erf prior to the disposal of the erf by the land development applicant. [3]

¹³ Section 36(1) of the Development Facilitation Act

¹⁴ Section 36(2) of the Development Facilitation Act.

- 7.3** The land development applicant shall, within the prescribed period, lodge
- a) with the Surveyor-General the plans, diagrams, documents and other information which the Surveyor-General requires to approve or provisionally approve the general plan in accordance with the approved application;¹⁵ and
 - b) with the Registrar the approved plans and diagrams together with the title deeds and other documents required by the Registrar for the opening of the subdivision register.¹⁶
- [5]

Question 8 - Model answer **[15]**

8.1

See the answer to this question on the next page 14

8.2 Documents to be lodged at the deeds registry

- **Application in terms of section 45(1)** of the Deeds Registries Act
- **Existing title deed** of erf 66, Bloemfontein
- **Transfer duty exemption certificate**
- **Clearance certificate**
- Copy of the **will, certified** by the Master and **endorsed** as accepted by him
- **Section 42(1)** of the Administration of Estates Act **certificate** by the conveyancer
- Proof of the marriage in community of property (marriage certificate if indicated thereon, otherwise affidavit by the surviving spouse) [5]

15 According to Regulation 23(1) issued under the Development Facilitation Act this period is within 5 months from the date that a land development applicant has been notified that his or her land development application has been approved by the tribunal, or within such extended period as the designated officer may allow.

16 According to Regulation 23(10) this period is within 2 months or such longer period as the designated officer may allow, after the date on which the Surveyor-General has approved the plans and diagrams.

Application in terms of Section 45(1)
of the Deeds Registries Act, 47 of 1937

I, the undersigned,

Jean Black

in my capacity as executrix in the estate of late John Black, estate number 123/2008, duly authorised thereto by virtue of Letters of Executorship issued by the Master of the High Court at Bloemfontein on 20 May 2008

and

in my personal capacity as surviving spouse of the deceased to whom I was married in community of property

do hereby apply in terms of section 45(1) of the Deeds Registries Act 47 of 1937, to the Registrar of Deeds at Bloemfontein for endorsing the Deed of Transfer T654/1985 holding

Erf 66 Bloemfontein
district Bloemfontein, Province Free State
Measuring 1234 (one two three four) square metres

to the effect that I am entitled to the abovementioned property, one-half share by virtue of the marriage in community of property and one-half share by virtue of the will, dated 10 March 2007 of the late John Black, who died on 20 March 2008, subject to the exclusion of any community of property as more fully set out hereunder

As to one-half share in the abovementioned property:-

Subject thereto that one half share in the abovementioned property shall not form part of any community of property in respect of any marriage entered into by my wife after my death.

Now therefore the said Jean Black is entitled to deal with the land as if she had taken formal transfer into her name of the share of the deceased spouse in the property, subject, however as regards one-half share in such land, to the above-mentioned special condition contained in the aforesaid will.

Signed at Bloemfontein on 17 September 2008

[10]

Adiation Certificate

Re: Estate of Late John Jones, Estate Number: 995/2008

I, the undersigned,

Mary Jones
Identity Number 300101 0035 08 2
unmarried
hereby declare as follows:-

- 1 I was married in community of property to the late John Jones on 11 May 1948.
- 2 I was still married to the late John Jones when he died on 10 March 2007.
- 3 I understand that I have a choice to adiate the terms of the joint will of me and my late husband dated at Bloemfontein on 10 March 2007 and be bound by its provision or to repudiate the provisions of such will.
- 4 The terms and consequences of adiation and repudiation has been fully explained to me and I understand them.
- 5 I have elected to adiate the terms of the said will and be bound by the provisions thereof and I hereby declare that I have done so.
- 6 I understand that my election as herein set out is irrevocable.

Signed at Bloemfontein on 17 September 2008

Mary Jones

Signed and sworn before me at Bloemfontein on 17 September 2008 by the deponent who acknowledged that she understands the content, consequences and legal implications of this affidavit, has no objection against taking the oath and regards the oath as binding on her conscience.¹⁷

Gawie le Roux
Commissioner of Oaths
Practising Attorney
451 Flindersteeg, Lynnwood

¹⁷ This declaration by the surviving spouse must be made before a commissioner of oaths.

Question 10 - Model answer

[15]

Erf 100 Goodwood

situate in the City of Cape Town, Cape Division, Province Western Cape

Measuring 742 (seven hundred and forty two) square metres

As will appear from annexed diagram S.G. No. 5/2008

Subject to the following conditions:

- 1 Subject to a servitude for municipal purposes in favour of the local authority, 2 (two) metres wide, the northern boundary of which servitude is indicated by the line lmn on the said diagram S.G. No. 5/2008, as will more fully appear from notarial deed of servitude K169/2004S.

- 2 The former Erf 1 Goodwood, depicted by the figure ABEF on the said diagram S.G. No. 5/2008 is subject to the following conditions, namely:-
Subject to a power station servitude in favour of ESKOM, 3 (three) square metres in extent, represented by the figure wxyz on the said diagram S.G. No 5/2008 and as will more fully appear from notarial deed of servitude K243/2000S.

TOTAL [200]

Model Answers to the Conveyancing Examination

September 2008

Part 1

Self-Study Deeds Course

Question 1 - Model answer

[4]

Exceptions where the title deed to a property need not be lodged: - ¹⁸

- a) Where immovable property is to be transferred in execution of the judgement of a court and the sheriff certifies that he has been unable to obtain possession of such title deed - (regulation 51(2)).
- b) Where immovable property is transferred by an officer appointed by an act regarding insolvency - (regulation 51(2)). ¹⁹
- c) Where immovable property is transferred by an executor as contemplated in section 56(1)(b) of the Deeds Registries Act (in other words an executor administering an insolvent deceased estate) - (regulation 51(2)).
- d) Transfers of land due to expropriation (or where land has vested in the State, province or local authority by any law) do not necessitate production of the title deed, provided that the transferee (state, province or local authority) declare that it has been unable to obtain possession of such title deed - (section 31(2)(b) of the Deeds Registries Act).
- e) Where immovable property is to be transferred in terms of a court order in terms of section 33(1) of the Deeds Registries Act (registration of title by other than the ordinary procedure) and the transferee has declared that he has been unable to obtain possession of the title deed - (section 33(11)).

¹⁸ It is not necessary to quote the sections and regulations of the act in the exam. It is given here purely to help those of you who want to go through the provisions in the act itself.

¹⁹ Paragraphs (b) and (c) have been regarded as one exception in accordance with the model answers of LEAD.

Question 2 - Model answer

[4]

Exceptions where the mortgage bond need not be lodged ²⁰

- a) Section 56 of the Deeds Registries Act stipulates that it is not necessary to lodge a mortgage bond for cancellation (release) in the following instances, namely:-
- 1 transfer by a sheriff in execution of a court order - (section 56 (1)(a));
 - 2 transfer from an insolvent estate - (section 56 (1)(b)); ²¹
 - 3 transfer from insolvent deceased estate - (section 56(1)(b));
 - 4 transfer from a company or close corporation in liquidation - (section 56(1)(b));
 - 5 transfer by a trustee elected or appointed under the Agricultural Credit Act 28 of 1966 - (section 56(1)(b));
 - 6 transfer by court order (that is where the court has ordered that it is not necessary for the bond to be lodged) - (section 56(1)(c)).
- b) transfers of land due to expropriation (or where land has vested in the State, province or local authority by any law) do not necessitate production and disposal of any mortgage bond over such property - (section 31(1)).

Question 3 - Model answer

[6]

- 3.1 The remaining extent of Billabong Township situated on Portion 4 of the Farm Skin Deep 123
Registration Division J.R., Province of Gauteng
Measuring 3,9876 (three comma nine eights seven six) hectares
Held by Certificate of Township Title T1234/2007 [3]

3.2 Documents to be lodged at the deeds office

- **Power of attorney** to pass transfer
- **Transfer duty** receipt (or exemption certificate)
- **Clearance certificate**
- **Certificate by the Surveyor-General** confirming the extent of the remainder of the township. [3]

²⁰ See footnote 18 above.

²¹ In the model answers of LEAD, numbers 1,2,and 4 are regarded as one exception.

Question 4 - Model answer

[6]

- A mortgage bond cannot be registered over a subdivided portion of land unless a certificate of registered title has been issued for such portion.
- The owner of a township in whose title deed the individual erven are not separately described, may not deal separately in any way with an individual erf in such township or any portion thereof or a share therein (except to transfer the whole erf), unless a certificate of registered title has been issued for such erf.
- The remainder of a property may not be transferred before any of the portions of the original property unless certificates of registered title have been issued for each portion thereof. The reason is that the remainder is only created and capable of being transferred once the certificates of registered title for the portions are registered.
- Joint owners of land holding their shares by one title deed as contemplated in section 34(1) of the Deeds Registries Act must obtain a certificate of registered title if one of them
 - intends to transfer a fraction of his share
 - intends to mortgage the whole or a fraction of his share
 - intends to lease the whole or a fraction of this share.

Question 5 - Model answer

[14]

5.1 I, the undersigned,
Magda van Biljon in my capacity as trustee in the insolvent estate of
Bennie Boekwurm
Identity Number 750905 5612 08 8
unmarried
duly appointed by virtue of Letters of Authority issued by the Master of the High Court
of South-Africa (Cape of Good Hope) at Cape Town on 17 September 2008 [2]

5.2 We, the undersigned

1 Isabel le Roux in my capacity as executrix in the estate of the late
Max Millian
Estate number 1234/2008
duly authorised thereto by virtue of Letters of Executorship issued by the
Master of the High Court of South-Africa (Transvaal Provincial Division) at
Pretoria on 17 September 2008
and

2 Mavis Millian
Identity number 451212 0076 08 7
unmarried²²
in my personal capacity as surviving spouse of the deceased to whom I was
married in community of property [3]

²² Or "widow".

- 5.3** I, the undersigned
 Alexis Preller in my capacity as trustee and duly authorised thereto by virtue of a resolution by the trustees of the High Flyer Trust
 Registration number IT 123/2000
 the trustees being duly authorised thereto by virtue of Letters of Authority issued by the Master of the High Court of South Africa (Transvaal Provincial Division) at Pretoria on 17 September 2008 [3]
- 5.4** I, the undersigned
 Tim Timlin in my capacity as trustee and duly authorised thereto by virtue of a resolution by the trustees of the Affies Old Boys Rugby Club
 dated 17 September 2008 at Pretoria [3]
- 5.5** I, the undersigned
 Irma Stern
 in my capacity as curator bonis of in the estate of the mental patient Crazy Cassidy
 Identity Number 450808 0075 08 2
 unmarried
 duly authorised thereto by virtue of Letters of Authority issued by the Master of the High Court of South-Africa (Cape of Good Hope) at Cape Town on 17 September 2008 [3]

Question 6 - Model answer [28]

- 6.1** Transfer duty is payable in the amount of R57 000,00. The seller is not a registered VAT vendor for purposes of the transaction and even if she was, the sale of a property that was previously let out for residential purposes is VAT exempt which means that transfer duty is payable according to the gliding scale for a natural person.
 23 [4]
- 6.2** Transfer duty is payable in the amount of R105 000,00. The seller is A, who is not registered for VAT and thus transfer duty is payable. The fact that his wife is selling her business has nothing to do with the transfer of the property. Transfer duty is calculated according to the gliding scale for a natural person. [4]
- 6.3** VAT will be payable at a rate of 14%. There are certain requirements for a transaction to be zero rated. Except for the fact that the seller and the purchaser must be registered VAT vendors for purposes of the transaction and the property be sold as an income earning activity and a going concern, the parties must *agree in writing* that the property is sold as a going concern. [4]

23 The purchaser can however claim back the transfer duty that he has paid as a input tax deduction.

- 6.4** VAT will be payable at the rate of 14%. The purchaser was not a registered VAT vendor at the time of the taxable supply being made, which is one of the requirements for a zero rated transaction. [4]
- 6.5** Yes. The SARS will allow the purchaser to register as a vendor and back date the registration certificate to the date that the supply took place. The supply will then qualify for the zero rate. [2]
- 6.6** Transfer duty in the amount of R0,00 is payable. When a natural person acquires immovable property from a person who is not a registered VAT vendor for purposes of the transaction, transfer duty is payable at a certain gliding scale. At present the first R500 000,00 of the purchase price in such instance is exempt from the payment of transfer duty. [2]
- 6.7** Transfer duty in the amount of R16 000,00 is payable, being 8% of the purchase price. Any public benefit organization, institution, board or body is only exempted from the payment of transfer duty in terms of section 9 of the Transfer Duty Act, if it acquires a property used wholly or substantially for the purposes of one or more public benefit activity carried on by such organization. [2]
- 6.8** Transfer duty is payable in the amount of R0,00. Section 9 of the Transfer Duty Act provides for the exemption from the payment of transfer duty in this instance. [2]
- 6.9** Transfer duty is payable in the amount of R0,00. Henry Brown should pay transfer duty on the amount which equalize the partition, i.e. on R40 000,00. The first R500 000,00 is exempt from the payment of transfer duty for a natural person. [2]
- 6.10** Transfer duty in the amount of R160 000,00 is payable by the trustees of the trust. The question whether transfer duty or VAT is payable is determined by the status of the seller and not the purchaser. As the seller is not a registered VAT vendor, transfer duty at a flat rate of 8% on the purchase price is payable by the purchaser (trust). [2]

Question 7 - Model answer [5]

A title deed may be permanently filed at the deeds registry in order to avoid waiting delivery of such title after a registration has taken place. Normally this will be the case where a few properties are contained in a title deed which properties have to be transferred one by one from the said mother title deed. On lodgement of a transaction a reference must be made (on the lodgement cover) to where the deed is filed.

A request for a deed to be filed is made by way of a request by the conveyancer on behalf of the owner to the Registrar and includes an indemnity in favour of the Registrar against damages the owner may suffer as a result of the loss and/or destruction of the deed.²⁴

24 It is not only a deed of transfer (or certificate of registered title, certificate of consolidated title or certificate of township title) that can be centrally filed, but also a mortgage bond in terms whereof multiple properties are being mortgaged. Further, a title deed can be permanently filed, not only where erven in a township are being transferred, but also where land has been subdivided into a number of portions and the title deed of such land is permanently filed.

Question 8 - Model answer ²⁵

[12]

- 8.1 The surviving wife will receive R125 000,00 ²⁶
Each child will receive R70 000,00 ²⁷ [4]
- 8.2 A's father will receive 50% of his estate, i.e. R150 000,00 ²⁸
A's two brothers will receive each R50 000,00
The two children of A's sister will each receive R25 000,00 [4]
- 8.3 The surviving wife will get R160 000,00 ²⁹
The child from the marriage with the deceased will receive R160 000,00
The adopted child will receive R160 000,00 ³⁰ [4]

Question 9 - Model answer

[2]

A rectification transfer from Jan van Zyl (the registered owner of Erf 124 Belville) to Chris le Roux must be done and another rectification transfer from Chris le Roux (the registered owner of Erf 123 Belville) to Jan van Zyl must be effected.

The causa in the power of attorney and deed of transfer must set out the full facts and circumstances under which the error occurred as well as how it should be rectified.

A rectification transfer is exempt from the payment of transfer duty, provided the transfer duty was fully paid on the transfer(s) in which the error in registration occurred - (section 9 of the Transfer Duty Act). A transfer duty exemption certificate however, still needs to be lodged.

25 Also see Question 11 May 2007 (Part 2), Question 2 September 2001 (Part 1) and Question 2 May 1998 (Part 2).

26 In this instance R125 000,00 is greater than a child's share of R83 750,00.

27 The balance of R210 000,00, after the R125 000,00 of the mother has been subtracted is divided by the number of children.

28 Section 1(1)(d)(ii) of the Intestate Succession Act 81 of 1987 provides that if a deceased person is not survived by a spouse or descendants but is survived by one of his parents, the surviving parent inherits half of the intestate estate and the descendants of the deceased parent the other half.

29 A child's share is greater than R125 000,00 in this instance.

30 In the Afrikaans exam paper question 8.3 stated that the parties were married **in community of property**. Should this be the case the answer shall read as follows, namely: -
The surviving wife is entitled to R365 000,00, consisting of: -
R240 000,00 (50% of the estate due to the community of property); and R125 000,00 (the R125 000,00 is greater than a child's share).

The child from the marriage with the deceased as well as the adopted child are each entitled to R57 500,00, being the residue of the estate (R480 000,00 - R365 000,00 = R115 000,00) divided by two.
The stepchild is not entitled to anything.

Question 10 - Model answer

[2]

Section 38 of the Deeds Registries Act provides for those rare cases where both-

- the client's copy of a title deed; and
- the deeds office copy thereof, are lost or destroyed.

The owner may then apply for the issue of a certificate of registered title in respect of such land in accordance with the diagram of the land.

Question 11 - Model answer

[2]

- A servitude feature of uniform width or a servitude feature at a specified distance from and parallel to a surveyed line shown on a registered diagram, in either instance extending along the entire length of such surveyed line, may be registered by description without a supporting diagram ³¹
- Any other servitude may, at the discretion of the Surveyor-General, be registered if he is satisfied that such servitude can be plotted on the diagram of the land affected. ³²
- It is not necessary to annex a diagram to a deed in which a servitude is created, if such servitude is represented on a general plan. ³³
- When a servitude is described in general terms, for example when a servitude is registered over an area or along a route as the parties may agree to later on or from time to time. ³⁴
- Where a servitude, for example a usufruct, is registered over the whole property held under the deed of transfer.

(Any three of the above)

Question 12 - Model answer

[4]

No, the Registrar will not accept certification by a conveyancer of a will. Regulation 50(1) to the Deeds Registries Act provides that where land is to be transferred in pursuance of the provisions of a will, codicil or other testamentary document, an accepted and certified a true copy by the Master of such document must be lodged.

If an accepted and certified copy of the will is already lodged in the deeds registry, it will not be necessary to lodge the will as a reference to the number and the date of the deed with which such copy is filed will be sufficient.

31 Regulation 73(2) to the Deeds Registries Act.

32 *Ibid.* A certificate by the Surveyor-General must be lodged confirming that the servitude can be plotted, together with the notarial deed of servitude.

33 *Ibid.*

34 *Ibid.*

Question 13 - Model answer

[5]

- 13.1 No ³⁵
- 13.2 No
- 13.3 Yes ³⁶
- 13.4 No
- 13.5 No

Question 14 - Model answer ³⁷

[6]

- 1 Peruse deed of sale and make sure that it is valid.
- 2 Conduct a deeds office search, check property- and party description and endorsements, interdicts and caveats.
- 3 Acknowledge receipt to estate agent, seller and purchaser.
- 4 Request personal documents from the seller and the purchaser to enable you to prepare your transfer documentation and for compliance with FICA.
- 5 Call for the title deed and guarantee requirements (cancellation figures) from the existing mortgagee, rates clearance figures and levy figures (if applicable).
- 6 After loan approval and receipt of documents from seller, purchaser and existing mortgagee (title deed and cancellation figures), prepare all transfer documents.
- 7 Call for guarantees from conveyancer attending to the registration of the new mortgage bond.
- 8 Call on both the seller and the purchaser to sign.
- 9 Collect a deposit for all your costs from the purchaser and obtain payment from the seller for the rates clearance figures (and levies, if applicable).
- 10 Pay transfer duty, rates and levies (if applicable) and obtain the respective certificates in this regard.
- 11 Upon receipt of guarantees, deliver the one guarantee in favour of the existing mortgagee to the conveyancer attending to the cancellation of the existing mortgage bond.
12. Arrange simultaneous lodgement with the bond- and bond cancellation attorneys. As soon as they are ready, lodge.

TOTAL: [100]

35 Registrar's Conference Resolution 26/2005 provides that only one spouse, married in community of property, may apply. The Registrar of Deeds however has a discretion to insist on the consent for the non-applicant in light of the provision of regulation 68(2) of the Deeds Registries Act.

36 Section 15(2)(g) of the Matrimonial Property Act.

37 This question has been asked word for word the same in Question 9 May 1998 (part 2).

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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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

Self-study Deeds Course for Attorneys
Model Answers of LEAD

The Consolidated Practice Manuals of the Deeds Office of South Africa
Relevant acts, regulations and prescribed forms