

Model Answers to the Conveyancing Examination

September 2009

Part 1

Self-Study Deeds Course

Question 1 - Model answer

[10]

1.1

Prepared by me

CONVEYANCER

Frantzen E

Application in terms of Section 45bis(1A)

of the Deeds Registries Act 47 of 1937

We, the undersigned,

- 1 John Smith
Identity number 601203 5544 08 7
unmarried
- 2 Mary Smith
Identity number 680209 0004 08 8
unmarried

do hereby apply in terms of section 45bis(1A) of the Deeds Registries Act 47 of 1937 to the Registrar of Deeds at Pietermaritzburg, for the endorsement of Deed of Transfer T1234/1988 in respect of -

Erf 23 Glen Morgan
Registration Division E.T., Province of KwaZulu Natal
Measuring 950 (nine hundred and fifty) square metres

Whereas each of us are entitled to $\frac{1}{2}$ (one-half) share in the abovementioned property in terms of a divorce court order issued by the High Court of South Africa (KwaZulu-Natal High Court, Pietermaritzburg) on 1 September 2009;

Now therefore we

- 1 John Smith
Identity number 601203 5544 08 7
unmarried
- 2 Mary Smith
Identity number 680209 0004 08 8
unmarried

are each entitled to ½ (one half) share in the aforesaid property as is we had received formal transfer thereof and may freely deal therewith.

Signed at Pietermaritzburg on 16 September 2009

John Smith

Mary Smith [8]

- 1.2 No transfer duty is payable, as the payment thereof is exempt in terms of the Transfer Duty Act. [2]

Question 2 - Model answer [5]

- 2.3
- 1 **power of attorney** to pass transfer
 - 2 existing **title deed** T4276/1988
 - 3 **transfer duty receipt**
 - 4 **clearance certificate**
 - 5 **consents**, in terms of **section 15(2) of the Matrimonial Property Act** by Sally Mekwe and Charmaine Jones
 - 6 existing **mortgage bond**
 - 7 **Application and consent** by the new partnership and mortgagee respectively to substitution in terms of section 57 [5]
- 2.4 All the partners, in their individual capacity would have to apply in writing to the Registrar of Deeds for an endorsement in terms of section 24bis(2) to be attached to the title deed. Proof of dissolution of the partnership must accompany the application and existing title deed as well as an affidavit by all the partners that the shareholding of the partners on date of registration of the property into the name of the partnership and on dissolution of the partnership has not changed.. A transfer duty exemption certificate must be lodged in this instance as well as a clearance certificate. The individual partners will then be entitled to deal with their respective shares in the property as if they had received formal transfer thereof. If there is a mortgage bond registered over the property, the bond can either be cancelled or the individual partners can apply in writing to be jointly and severally substituted as debtors under the bond and renounce the exception . The mortgagee must also give his consent for the substitution of the individual partners as debtors under the bond. [5]

Question 2 - Model answer

[30]

1.1

Prepared by me

Form E

CONVEYANCER

Frantzen E

Deed of Transfer

Be it hereby made known that

Erinda Frantzen

appeared before me, the Registrar of Deeds at Cape Town he, the said appearer, being duly authorised thereto by virtue of a power of attorney granted to her by

Vuzi Mekwe

Identity number 751219 5579 08 2

married in community of property to Sally Mekwe ¹

and

Edward Jones

Identity number 700912 5579 08 7

married in community of property to Charmaine Jones

and

Maphuti Mahlangu (previously Lamola)

Identity number 721201 0079 08 8

unmarried

together carrying on business in partnership as Mekwe and Associates

dated the 1 st day of September 2009 and signed at Cape Town

¹ Consents, in terms of section 15(2) of the Matrimonial Property Act by both Sally Mekwe and Charmaine Jones must be lodged together with the transfer.

And the appearer declared that the aforementioned Vuzi Mekwe has, in terms of an agreement dated 5 January 2009 retired from the partnership and that in terms of the said agreement his share in the undermentioned property has been taken over by the remaining partners;

And she in her capacity aforesaid did by these presents cede and transfer to and on behalf of -

Edward Jones

Identity number 700912 5579 08 7

married in community of property to Charmaine Jones

and

Maphuti Mahlangu

Identity number 721201 0079 08 8

unmarried

carrying on business in partnership as Jones and Mahlangu Decorators

their heirs, executors, administrators or assigns in full and free property-

Portion 1 of Erf 114 Solwezi

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

in extent 2500 (two five nil nil) square metres

First transferred and still held by Deed of Transfer T4276/1988 with diagram S.G. no A351/1988 relating thereto ² [15]

- 2.2** The old partnership can be substituted with the new partnership as mortgagors under the bond in terms of section 57 of the Deeds Registries Act. Section 57 provides that if the owner (old partnership) of land which is mortgaged under a registered mortgage bond transfers the whole of the land mortgaged thereunder to another person (new partnership) and has not reserved any real right in such land, the Registrar may register the transfer and substitute the transferee for the transferor as debtor in respect of the bond. Written consent by the mortgagee and the transferee (new partnership) in prescribed form W to the substitution of the old partnership with the new partnership as debtor under the bond must be lodged together with the existing bond. [5]

See page 2 for the answer to question 2.3 and 2.4

² As the existing title deed is the one whereby this property was created as a entity on its own for the very first time - (the diagram is attached to this title deed) form TT is followed in this title deed. Therefore form UU adapted must be used for this subsequent transfer.

- (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 1003, Heatherton Township for a purchase price of not less than R 975 000,00 (nine hundred and seventy five thousand rand). The purchaser shall have in his sole and absolute discretion the choice to accept a lower purchaser price for such property in which event this condition shall deemed to be fulfilled.
- (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 and the proceeds of the sale in respect of the property mentioned in paragraph (a) shall be appropriated towards the purchase price of the property sold in terms of this agreement.

³ See September 2008 (Part 1), question 2.

Question 4 - Model- answer

[8]

Prepared by me

CONVEYANCER

Le Roux GJ

Special Power of Attorney⁴

I, the undersigned

John Smith

Identity number 550619 5789 08 2

unmarried

in my capacity as executor in the estate of late Irene Smith, estate number 7891/2009, duly authorised thereto by virtue of letters of executorship issued by the Master of the South Gauteng High Court, Johannesburg on 15 June 2009

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

do hereby nominate constitute and appoint Sam Smith

to effect the sale of the undermentioned property and to sign and execute the deed of sale as well as all documents required to pass transfer of the property -

Erf 100 Acacia Township

Registration Division I.Q., Province of Gauteng

in extent 1 200 (one thousand two hundred) square metres

Held by Deed of Transfer T49194/1983

to the purchaser thereof, subject to the following condition -

The property mentioned herein shall not be sold for a price less than R1 150 000,00 (one million one hundred and fifty thousand rand), which sum may include agent's commission.

And to receive and hold the proceeds of the sale on behalf of his principal.

Signed at Johannesburg on 16 September 2009

As witnesses

1 _____

2 _____

John Smith in my capacities as aforesaid

⁴ See Example 5 C-1 in Part 4 of the Self-study Deed Course for Attorneys.

Question 5 - Model answer

[7]

Prepared by me

CONVEYANCER

Le Roux GJ

Application in terms of section 37 of the Deeds Registries Act 47 of 1937

I, the undersigned

Pieter Louw

Identity number 490508 5236 08 4

unmarried

do hereby apply at the Registrar of Deeds at Pretoria in terms of the provision of section 37 of the Deeds Registries Act for the issue to me of a certificate of registered title under the provisions of section 35 of the Deeds Registries Act 47 of 1937 in respect of my aggregate share in the undermentioned property, namely -

5/8 (fifth eighth) share in and to

Erf 123 Pretoria Township

Registration Division J.R., Province of Gauteng

measuring 1000 (one thousand) square metres

Held by the following title deeds in the following shares namely -

1/4 (one quatre) share by means of Deed of Transfer T1234/2000;

1/4 (one quatre) share by means of Deed of Transfer T567/2005; and

1/8 (one eight) share by means of Deed of Transfer T789/2008.

Signed at Pretoria on 16 September 2009

Pieter Louw

Question 6 - Model answer

[15]

6.1 The Farm Mooigedacht 108
Registration Division J.R., Province of Gauteng
measuring 365,1234 (three six five comma one two three four) hectares

Held by Deed of Transfer T951753/2003

Subject to the conditions of title and especially subject to the servitude of life long usufruct in favour of Linda Wally, identity number 451215 0003 08 7, unmarried, preference in respect of which is waived as set out below.⁵ [6]

6.2 Renunciation / Waiver of preference

- i Also appeared the said Erinda Frantzen duly authorised thereto by power of attorney, executed at Pretoria on 16 September 2009, and granted in her favour by
Linda Wally
Identity number 451215 0003 08 7
unmarried
- ii AND the appearer declared that the said *Linda Wally*, declared to waive and postpone, as she hereby waives and postpones, in favour of this mortgage bond, the usufruct over the said property held by her principal by the notarial deed of cession of usufruct K472/1987S to the intent that his/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 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 applied towards payment of such moneys as shall then be due and owing to the mortgagee under this bond, plus all costs and interests due. [9]

⁵ According to regulation 41(1), where it is sought to mortgage land held under special conditions, limiting the owner, the Registrar may require those conditions to be set out in the bond or a suitable reference made thereto.

Question 7 - Model answer

[10]

7.1 And the appearer declared that -

Whereas in the matter in which ABSA Bank Limited was the plaintiff and James Dickens, identity number 660123 503508 2, was the defendant, in the High Court of South Africa (Northern Cape High Court, Kimberley), case number 1234/2009, the hereinafter mentioned property, being registered in the name of the said James Dickens, by virtue of a warrant of execution issued by the Registrar of the High Court of South Africa (Northern Cape High Court, Kimberley) on 2 August 2009, was attached by the sheriff and sold by public auction on 16 September 2009 to the undermentioned transferee, Marc Williams [5]

7.2 And the appearer declared that -

Whereas Julius Ceaser, who died on 15 June 2009, is the registered owner of the undermentioned property, subject to a fideicommissum in favour of Jonas van der Merwe;

And whereas the said Jonas van der Merwe is, in terms of the will of the late Margaret Ceaser dated 15 December 2000 entitled to the undermentioned property, being the only surviving fideicommissary heir; [3]

7.3 And the appearer declared that -

his principals had on 16 September 2009 truly and legally donated the undermentioned property to the undermentioned transferee, subject to a life usufruct in favour of the said transferors, as more fully set out hereunder; [2]

Question 8 - Model answer

[10]

8.1 the joint estate of the late John Smith

estate number 1234/2009

and his surviving spouse Margaret Smith

identity number 490123 0045 08 7

widow

their heirs, executors, administrators or assigns [3]

8.2.1 John Paul

Identity number 801212 5748 08 2

and

Mary Paul

Identity number 820308 0052 08 8

married in community of property to each other

their heirs, executors, administrators or assigns [3]

8.2.2 Peter Baker

Identity number 650218 5412 08 8 and

Sue Baker

Identity number 680808 0004 08 8

married in community of property to each other

their heirs, executors, administrators or assigns

[1]

8.2.3 Marlene Joubert

Identity number 660209 0065 08 2

married in community of property to Victor Joubert, with the 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 Shane Janse dated 6

October 2000

her heirs, executors, administrators or assigns

[3]

Question 9 - Model answer

[10]

9.1 do hereby cede, assign and transfer all my right, title and interest in the above bond to and in favour of -

ABC Bank Limited

Registration number 1960/001234/06

as security for the repayment of any amount outstanding under the overdraft facility granted by ABC Bank Limited

I declare that the full amount is still owned under the bond.

[3]

9.2

The answer to this question can be found on the following page

9.3 do hereby consent to the registration of a servitude in favour of ESKOM to convey electricity over -

Erf 3 Montana Township, Registration Division J.R., Province of Gauteng

measuring 900 (nine hundred) square metres and held by Deed of Transfer

T1348/2000, as more fully set out in the attached notarial deed of servitude,

initialled for identification purposes, free from the bond.

[3]

Question 10 - Model answer

[4]

According to section 14 of the Share Block Control Act 59 of 1980, a share block company may not increase its loan obligation or encumber any of its assets unless the increase or encumbrance has been approved by a resolution of at least 75%, in number of the members of the company, excluding the share block developer, having the right to vote at the relevant meeting and holding an aggregate of at least 75% of the total number of votes of all those members (excluding the votes held by the share block developer).

Consent to the noting of a part payment

I, the undersigned

Alicia Brandt in my capacity as signing official and duly authorised thereto by virtue of a resolution of the board of directors of
ABC Bank Limited
Registration number 1960/001234/06

being the legal holder of the undermentioned bond, namely -

number B123456/2006

passed by Mandla Mekwe
Identity number 680212 5498 08 4
unmarried

in favour of ABC Bank Limited
Registration number 1960/001234/06

for the amount of R900 000,00 (nine hundred thousand rand) and an additional sum of R180 000,00 (one hundred and eighty thousand rand)

do hereby consent to a part payment of R145 000,00 (one hundred and forty five thousand rand) being registered against the abovementioned bond.

Signed at Pretoria on 16 September 2009

As witnesses

1 _____
2 _____

A Brandt obo ABC Bank Ltd

Question 11 - Model answer

[15]

11.1

Prepared by me

CONVEYANCER

Frantzen E

Power of Attorney to pass transfer ⁶

We, the undersigned,

1 Adriaan Boshoff

in my capacity as executor in the estate of the late Chris White

Estate Number 1234/2009 duly appointed hereto by letters of executorship issued by the Master of the North Gauteng High Court, Pretoria on 20 July 2009

and

2 Susan White

Identity number 650217 0094 08 2

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

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 in terms of the joint will dated 7 July 2008 of the late Chris White, who died on 4 April 2009 and his surviving spouse Susan White, to whom he was married in community of property, the hereinafter mentioned property was specially bequeathed to their son, John White, subject to the payment of a bequest price of R880 000,00 to the surviving testator, Susan White;

And whereas the surviving testator has accepted the terms of the will and the hereinafter mentioned transferee has accepted the hereinafter mentioned property subject to the payment of such bequest price;

NOW THEREFORE we hereby authorise the appearer to transfer to

John White

Identity Number 721220 0073 08 8

unmarried

⁶ This same question was asked in May 1995 (Part 1), question 3.

the following unit namely -

A unit consisting of-

- (a) Section 3 as shown and more fully described on sectional plan SS193/2007 in the scheme known as Heather Hights, in respect of the land and building or buildings situate at Rosebank Township, Local Authority: City of Johannesburg, of which section the floor area according to the sectional plan is 100 (one hundred) 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 ST3791/2008

Signed at Pretoria on this the 9 th day of September 2009

As Witnesses:

- 1. _____
_____ Adriaan Boshoff

 - 2. _____
_____ Susan White
- [9]

11.2

The answer to question 11.2 is on the next page

- 11.3** No transfer duty is payable in respect of the one half share acquired from the deceased. However, transfer duty is payable by John White on the one half share in the unit which he acquired from his mother. [1]

11.2 Conveyancer's Certificate to section 15B(3)(a)

of the Sectional Titles Act 95 of 1986

I, the undersigned

Erinda Frantzen

a practising conveyancer, hereby certify that in respect of the undermentioned property, namely -

A unit consisting of -

- (a) Section 3 as shown and more fully described on sectional plan SS193/2007 in the scheme known as Heather Hights, in respect of the land and building or buildings situate at Rosebank Township, Local Authority: City of Johannesburg, of which section the floor area according to the sectional plan is 100 (one hundred) 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 ST3791/2008

- 1 The body corporate has certified that as at date of registration all moneys due to the body corporate by the transferor in respect of the said unit have been paid, or provision has been made to the satisfaction of the body corporate for the payment thereof.
- 2 No real right of extension of the scheme, as contemplated in section 25, has been registered in favour of the developer or the body corporate.
- 3 To the best of my knowledge and belief and having made due enquiry, I am satisfied that the transfer to be effected is in all respects in accordance with law, and I have, where possible, verified all relevant facts and matters and have, where necessary, obtained proof in substantiation thereof.

Signed at Pretoria on 10 September 2009.

Conveyancer
E Frantzen

Question 12 - Model answer

[15]

12.1 Erf 100 Nelspruit Extension 60 Township

Registration Division J.T., Province of Mpumalanga
measuring 900 (nine hundred) square metres

As will appear from general plan S.G. no 10/2006 and held by Deed of Transfer T200/1997 [7]

12.2 First transferred and still held by Deed of Transfer T8000/2006 with general plan S.G. no 10/2006 relating thereto [4]

12.3.1 A subdivisinal diagram must be approved by the Surveyor-General; All the conditions imposed by the local authority must be complied with; and
A written application by the registered owner of the property must be lodged for the issue of a certificate of registered title in terms of section 43 of the Deeds Registries Act 47 of 1937 in respect of Portion 1 of Erf 100 Nelspruit Extension 60 Township. [2]

12.3.2 First transferred by Deed of Transfer T8000/2006 with diagram S.G. no 123/2007⁷ relating thereto and held by Deed of Transfer T200/2007. [2]

Question 13 - Model answer

[15]

And the appearer declared that -

Whereas, in terms of the joint will dated 16 February 2000 of the late Irene Smith, who died on 20 April 2009 and John Smith, who were married in community of property to each other, the testators massed their estates and bequeathed their whole estate to their only child, Sandra Smith, unmarried, subject to a life usufruct in favour of the surviving spouse;

And whereas John Smith repudiated the terms of the will;

Now therefor, by these presents the said appearer hereby cedes and transfers to and on behalf of -

⁷ As Erf 100 is indicated on a general plan, a new diagram shall be drafted by the land surveyor when it is being subdivided, together with the diagram for Portion 1 of Erf 100, which diagram numbers shall follow chronologically to each other.

Sandra Smith
Identity number 790204 0045 08 1
unmarried
her heirs, executors, administrators or assigns

in full and free property
½ (one half) undivided share in and to -
Erf 100 Silver Sands
situated in the Sol Plaatjie Municipality, District Kimberley, Province Northern
Cape
in extent 860 (eight six nil) square metres

First transferred and still held by Deed of Transfer T512/2007 with general plan
S.G. no 200/2006 relating thereto

Question 14 - Model answer [14]

See the next page for the answer

Question 15 - Model answer [10]

See the page after the next page for the answer

Question 16 - Model answer⁸ [12]

- 16.1** His surviving wife is entitled to R125 000,00 (as this amount is higher than a child's share of R83 750,00)
Each of the three children will share equally in the remaining money, in other words each are entitled to R70 000,00. [4]
- 16.2** His father is entitled to 50% of his estate, namely R150 000,00. The survivors on his mother's side are entitled to the other half. His two brothers are therefor entitled to R50 000,00 each and the two children of his deceased sister are entitled to R25 000,00 each. [4]
- 16.3** His wife, the child born from their marriage and their adopted child are each entitled to R160 000,00. [4]

⁸ This question was also asked in September 2008 (Part 2), question 8.

Question 14 - Model answer

[14]

Prepared by me

Form WW

CONVEYANCER
Le Roux GJ

Application and consent in terms of section 40(5)(a) ⁹
of the Deeds Registries Act 47 of 1937

I, the undersigned,
Goodwin Mahlangu
Identity Number 400605 5054 081
unmarried

having applied for the issue of a Certificate of Consolidated Title in respect of
Erf 8 Hoekpunt
District of Kimberley, Northern Cape Province
measuring 3000 (three thousand) square metres

represented on consolidation diagram SG no 55/2009

comprising the - Erf 6 Hoekpunt
District of Kimberley, Northern Cape Province
Measuring 2000 (two thousand) square metres

mortgaged under mortgage bond no B171/2000

And other land, do hereby apply for the consolidated land as represented on the
said diagram to be substituted for the aforesaid land mortgaged under the said
bond.

Signed at Hoekpunt on 16 September 2009

As witnesses

1 _____
2 _____

G Mahlangu

⁹ See example 9F in the Self-Study Deeds Course for Attorneys (Part 4), practical examples.

and I, the undersigned, Austin Powers, the signing officer of
Power Bank Limited

Registration number 1970/005832/06

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

Signed at Kimberley on 10 September 2009

As witnesses

1 _____

2 _____

A Powers obo Power Bank Ltd

Question 15 - Model answer

[10]

Agreement of Cancellation

entered into by and between

James Cooke

Identity number 620108 5437 08 4

unmarried

(Hereinafter referred to as the seller)

and

Alistar Coetzee

Identity number 520419 5438 08 8

unmarried

(Hereinafter referred to as the purchaser)

Whereas the seller and the purchaser entered into a deed of sale on 14 August 2009 for the amount of R1 250 000,00 (one million two hundred and fifty thousand rand) in respect of the following property, namely -

Erf 311 Farrarmere

Registration Division I.N., Province North West

in extent 950 (nine five nil) square metres

Held by Deed of Transfer T1234/2000

And whereas the parties have agreed to cancel the above agreement upon the undermentioned terms and conditions;

Now therefor the seller and the purchaser hereby agree to cancel the said agreement of sale.

The parties confirm that no compensation was paid by or on behalf of the purchaser to the seller or any other person for the cancellation of the agreement of sale.

Signed at Vryburg on 16 September 2009

As witnesses

1

James Cooke

2

Alistar Coetzee

Question 17 - Model answer ¹⁰

[4]

An endorsement in terms of section 16 of the Deeds Registries Act can only be used if the State acquired all the property held by one title deed. Therefore a certificate of registered title can be taken out in terms of section 36 of the Deeds Registries Act in respect of the property acquired by the State and then registration of transfer can be effected in terms of section 16 (by means of an endorsement).

Question 18 - Model answer ¹¹

[5]

According to the last proviso in section 65(1) of the Deeds Registries Act, a negative ¹² personal servitude may be created directly in a deed of transfer and not by means of a notarial deed. This means that the condition may be created by putting it in the power of attorney to pass transfer from the developer to the purchaser and bringing that condition forward in the deed of transfer itself. This home owner association condition is a personal servitude (as it is in favour of the home owners association) and it is a negative personal servitude. The condition must be capable of being enforced by some person (the home owners association) mentioned in it and the home owners association must have given its acceptance of the condition in its favour (either in the power of attorney or on a separate document) which must be lodged at the deeds office together with the transfer.

TOTAL

[200]

¹⁰ This question was also asked in May 1995 (Part 2), question 16.

¹¹ This question was also asked in May 1998 (Part 2), question 4. Also see Self-Study Deeds Course for Attorneys, part 1, chapter 6-11.

¹² In other words a condition which restrict the exercise of any right of ownership in immovable property.

Model Answers to the Conveyancing Examination

September 2009

Part 2

Self-Study Deeds Course

Question 1 - Model answer

[4]

1.1

Prepared by me

CONVEYANCER

Frantzen E

Application in terms of Section 45bis(1A)

of the Deeds Registries Act 47 of 1937

We, the undersigned,

- 1 Koos Louw
Identity number 601203 5544 08 7
unmarried
- 2 Sannie Louw
Identity number 680209 0004 08 8
unmarried

do hereby apply in terms of section 45bis(1A) of the Deeds Registries Act 47 of 1937 to the Registrar of Deeds at Cape Town, for the endorsement of Deed of Transfer T6578/1999 in respect of -

Erf 1234 Belville

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

Measuring 950 (nine hundred and fifty) square metres

Whereas our marriage was dissolved on 27 April 2005 in terms of a court order issued by the High Court of South Africa (Western Cape High Court, Cape Town) under case number 876/2005;

And whereas each of us are entitled to $\frac{1}{2}$ (one-half) share in the abovementioned property in terms of such divorce court order;

Now therefore we

1 Koos Louw
Identity number 601203 5544 08 7
unmarried

2 Sannie Louw
Identity number 680209 0004 08 8
unmarried

are each entitled to $\frac{1}{2}$ (one half) share in the aforesaid property as is we had received formal transfer thereof and may freely deal therewith.

Signed at Cape Town on 16 September 2009

Koos Louw

Sannie Louw
[12]

1.2 Documents to be lodged at the deeds registry

- 1 Existing **title deed** to be endorsed
- 2 Copy of the **divorce court order**, certified as a true copy by the Registrar of the High Court
- 3 **clearance certificate** [3]

Question 2 - Model answer [9]

- 2.1 Section 42(2) of the Administration of Estates Act 66 of 1965 requires that in the case of a sale of immovable property by the executor, from a deceased estate, the Master must confirm that he has no objection against the proposed transfer.

In order to obtain the Master's consent, to issue a section 42(2) certificate (endorsement on the power of attorney) an application must be made to the Master. For this purpose Form JM33 must be fully completed and signed by the executor. This form contains a list of requirements which must be fulfilled before the Master will endorse the power of attorney. In order to obtain the Master's consent, the following documentation must be submitted to the Master, namely-

- a) the **application form JM33**
- b) **written consents** to the sale of the *heirs*
- c) certified copy of the **deed of sale**
- d) the **power of attorney** to receive the Master's endorsement.

2.2 The preparer accept responsibility that -

- a) the executor has been duly appointed as executor in the estate
- b) the executor is acting in accordance with powers granted to him
- c) If the executor had to give security, that the necessary security has been furnished to the Master ¹³

[3]

Question 3 - Model answer

[6]

3.1 Exceptions where the title deed to a property need not be lodged - ¹⁴

- 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)); ¹⁵

¹³ This question has been asked in September 1999 (Part 2), question 11.4. Also see Example 5A of Self-Study Deeds Course for Attorneys, Part 4.

¹⁴ This question was also asked in September 2008 (Part 2), question 1. 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.

¹⁵ Paragraphs (b) and (c) have been regarded as one exception in accordance with the model answers of LEAD.

- 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)).

(Any three of the above)

[3]

3.2 It is not necessary to lodge a mortgage bond for cancellation (release) in the following instances, namely - ¹⁶

- a) transfer by a sheriff in execution of a court order - (section 56 (1)(a)); ¹⁷
- b) transfer from an insolvent estate - (section 56 (1)(b)); ¹⁸
- c) transfer from an insolvent deceased estate - (section 56(1)(b));
- d) transfer from a company or close corporation in liquidation - (section 56(1)(b));
- e) transfer by a trustee elected or appointed under the Agricultural Credit Act 28 of 1966 - (section 56(1)(b));
- f) transfer by order of court (where the court has ordered that it is not necessary to lodge the mortgage bond) - (section 56(1)(c));
- g) transfer of a property which has been expropriated under the authority of any law or has by statute vested in the State (or any public or local authority or

¹⁶ This question was also asked in September 2008 (Part 2), question 2.

¹⁷ 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.

¹⁸ In the model answers of LEAD, numbers 1,2,and 4 are regarded as one exception.

any body corporate or any association of persons ¹⁹ (section 31(1) of the Deeds Registries Act).

(any three of the above)

[3]

Question 4 - Model answer

[10]

Persons entitled to sign the preparation clause -

- 1 referred to in regulation 43 -
 - a) a conveyancer

- 2 referred to in regulation 44 -
 - a) a practising attorney; or
 - b) a practising notary; or
 - c) a practising conveyancer
 - d) If it is signed by an attorney or notary, it must be countersigned by a conveyancer
 - e) an attorney, notary or conveyancer in the employ of the State preparing in the course of his employment any document which is required for the performance of any function to be performed in the department in which he is employed

Responsibilities that are assumed in terms of section 15A(1) & (2) to the extent provided in regulation 44A -

- 1 that all copies of the deeds or documents intended for execution and/or registration are identical at the date of lodgement;

- 2 that, in the case of a *deed of transfer or a certificate of title* -
 - a) all applicable conditions of title in or endorsed upon the owner's copy of the title deed
 - b) together with any applicable proclaimed township conditions have been correctly brought forward in that deed;

¹⁹ Or any public or local authority or any corporate body or any association of persons.

- 3 *in the case of a power of attorney, application, consent, or agreement of partition*, signed by a person in his capacity as an executor, trustee, tutor, curator, liquidator or judicial manager -
- a) such person has in fact been appointed in that capacity; and
 - b) acting therein in accordance with the powers granted to him; and
 - c) that any security required has been furnished to the Master;
- 4 That to the best of his knowledge and belief and after due enquiry has been made -
- a) the names, identity number or date of birth and the marital status of any natural person being a party to a deed or document; and
 - b) in the case of any other person or a trust, its name and registration number, if any
- are correctly reflected in that deed or document;
- 5 *in the case of a power of attorney, application, consent, or agreement of partition* -
- a) the necessary authority has been obtained for the signing of such document in a representative capacity on behalf of a company, close corporation, church, association, society, trust or other body of persons or an institution; and
 - b) the transaction as disclosed therein is authorised by and in accordance with the constitution, regulations or founding statement or trust instrument of a trust, as the case may be, of any church, association, close corporation, society, trust or other body of persons or institutions other than a company, except a share block company as defined in the Share Block Control Act, 1980 being a party to such document;
- 6 *that, in the case of a deed of transfer, certificate of title or mortgage bond-*
- a) the names, identity number or date of birth and the marital status of any natural person being a party to a deed or document; and
 - b) in the case of any other person or a trust, its name and registration number, if any
- have been brought forward correctly from the special power of attorney or application.

Question 5 - Model answer

[10]

Prepared by me

CONVEYANCER

Le Roux GJ

Application in terms of section 17(4)

of the Deeds Registries Act 47 of 1937

I, the undersigned

John Brian Clark

Identity number 630102 5123 08 7

married in community of property to Mary Elizabeth Clark

hereby declare that -

- 1 I married Mary Elizabeth Clark, identity number 640602 0080 08 0, on 6 September 1993 and this marriage still subsists.

- 2 As proof of such marriage and that we are married in community of property to each other I attach a copy of my marriage certificate and a marital status affidavit respectively.

- 3 the undermentioned property is registered in my name only by means of Deed of Transfer T1234/1990 but the said property is an asset in a joint estate of me and my spouse Mary Elizabeth Clark.

- 4 The aforesaid property is not mortgaged and there are no mutually dependant deeds requiring endorsement.

I now therefor do hereby apply to the Registrar of Deeds at King William's Town for the endorsing of Deed of Transfer T1234/1990 in terms of section 17(4) of the Deeds Registries Act 47 of 1937, whereby the following property is held, namely -

Erf 10023 King William's Town

Local Municipality of King Williams Town, Division East London, Province Eastern Cape

in extent 800 (eight hundred) square metres

to the effect that I am now a party to a marriage in community of property.

J B Clark

Question 6 - Model answer ²⁰

[9]

- 6.1 No - (section 77(2) of the Deeds Registries Act). [1]
- 6.2 No - (section 56(1)(b) of the Deeds Registries Act). [1]
- 6.3 Yes. Consent to release of the portion transferred from the operation of the bond. [1]
- 6.4 No formal consent is required. However, it is often a condition of the first bond holder that the mortgagee's consent to the registration of a further bond in favour of another mortgagee will be required (non- prejudice clause where the mortgagees are different persons/entities) [1]
- 6.5 Yes. Consent to cancellation or to consolidation and to substitution of the component properties with the consolidated property as security under the bond. [1]
- 6.6 No. [1]
- 6.7 Yes. Consent to cancellation of the servitude in favour of the mortgaged property. [1]
- 6.8 Yes. Consent to the issue of a Certificate of Registered Title issued in terms of section 43 of the Deeds Registries Act. [1]
- 6.9 Yes. Consent to cancellation. Section 56(1)(b) of the Deeds Registries Act does not apply. [1]

Question 7 - Model answer

[5]

- 7.1 Yes. [2]
- 7.2 He can award exclusive use areas by amending the management rules of the scheme by inserting the right to exclusive use of certain exclusive use areas to the owners of certain units. As the body corporate has not yet been established he does not even need a unanimous resolution (which will be required if the body corporate is in existence) to amend the rules. Attached to the rules must be-
- a) a layout plan to scale on which is clearly indicated the locality of the distinctively numbered exclusive use and enjoyment of parts, the purpose for which such parts may be used; and
 - b) a schedule indicating to which member each part is allocated - Section 27A. [3]

²⁰ This question was also asked in September 1994 (Part 2), question 15.

Question 8 - Model answer

[10]

Documents to be lodged at the deeds registry -

White lodgement cover

- 1 certificate of registered sectional title for unit 1
- 2 power of attorney to pass transfer
- 3 concept (draft) deed of transfer
- 4 transfer duty exemption certificate ²¹
- 5 section 15B(3)(a) conveyancer certificate
- 6 clearance certificate for the unit
- 7 clearance certificate for the land on which the scheme has been opened
- 8 Affidavit by the developer in respect of the applicability of and compliance with section 10 (section 15B(3)(c) affidavit

Yellow lodgement cover

- 1 certificate of establishment of a body corporate (in duplicate)

White lodgement cover

- 1 Certificate of real right of exclusive use area
- 2 Unilateral notarial deed of cession of exclusive use area
- 3 Clearance certificate for the unit

Yellow lodgement cover

- 1 existing mortgage bond
- 2 consent by the mortgagee for the release of the unit and exclusive use area from the operation of the bond

Question 9 - Model answer

[10]

- 9.1** Sell, exchange and donate, irrespective of whether such sale, exchange or donation is subject to a suspensive or resolutive condition. [2]
- 9.2** A deed of alienation is an agreement in terms of which land is sold, donated or exchanged. A contract is a deed of alienation in terms of which land is

²¹ If it is presumed that the developer is a registered Vat vendor.

sold and the purchase price is payable in more than two installments. ²² [4]

9.3 All contracts of sale, exchange or donation of land must be contained in a written document, signed by the parties or their agents acting on their written authority. [3]

9.4 No ²³ [1]

Question 10 - Model answer [5]

I will advise Peter that the provisions of the Subdivision of Agricultural Land Act 70 of 1970, do not apply in respect of the transfer of the farm to his four children as the testator died before 1971 and furthermore that the *fideicommissum* terminates when the farm is transferred to his children. These children will then each be entitled to deal with his or her one quarter (1/4) share.

Question 11 - Model answer [8]

Documents to be lodged at the deeds registry -

- 1 **application** for the registration of the sectional plan of consolidation
- 2 two copies of the **sectional plan of consolidation**
- 3 **sectional title deeds** of the sections to be consolidated
- 4 if the sections are subject to a mortgage bond(s)
 - a) any **sectional mortgage bonds** registered against each section; together with
 - b) **consent of the mortgagee(s)** to -
 - i) cancellation of the bond; or
 - ii) the registration of the sectional plan of consolidation and the substitution by the consolidated section of the old sections - (if all the to be consolidated sections are subject to the same mortgage bond); or

²² See Chapter 2 of Self-Study Deeds Course for Attorneys, Part 3. This question was asked in September 2005 (Part 1), question 11.2 and repeated in May 2006 (Part 2) question 17.2.

²³ section 3(1) of the Alienation of Land Act.

iii) the registration of the sectional plan of consolidation and the substitution of the section previously mortgaged with the consolidated section - (in the instance where section 40(5)(a) of the Deeds Registries Act are applicable)

5 a **certificate of registered sectional title** prepared in accordance with Form Q in respect of the new consolidated section;

6 such other documents and particulars as may be prescribed

Question 12 - Model answer

[3]

12.1 No, not without the co-operation of his trustee.

[1]

12.2 Yes, a disclaimer by the trustee appointed in the insolvent estate must be lodged together with the registration of the mortgage bond. This disclaimer must state the following, namely-

- 1 that the trustee consents to the registration of the mortgage bond; and
- 2 that he does not lay any claim to the property of the insolvent.²⁴ **[2]**

TOTAL: [100]

²⁴ According to Registrar's Conference Resolution 43/1999, the consent of the trustee must be obtained for each and every act, unless the trustee has in his initial consent mentioned that the insolvent may freely deal with the property. In practice trustees do not always want to mention in their consent that the trustee may freely deal with the property. This sentence may be omitted from the consent and shall be accepted by the deeds registry, but if the insolvent again wants to deal with the property, he will have to obtain a new consent for any subsequent transaction by him.

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

and published by

Self-Study Deeds Course CC

Registration number 1994/016876/23

PO Box 74047
Lynnwood Ridge
0040

Flinders Lane 451
Lynnwood, Pretoria

Tel: (012) 361-1715

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
Registrar's Conference Resolutions

