

Model Answers to the Conveyancing Examination

September 2011

Part 1

Self-Study Deeds Course

Question 1 - Model answer

[50]

1.1

Prepared by me

CONVEYANCER

Le Roux GJ

Application in terms of Section 40 of the Deeds Registries Act 47 of 1937 ¹

I, the undersigned

Remmington Steele in my capacity as director and duly authorised thereto by virtue of a resolution of

Trident Steel Proprietary Limited ²

Registration number 1972/006101/07

do hereby apply in terms of section 40 of the Deeds Registries Act 47 of 1937 to the Registrar of Deeds at Johannesburg, for the issue to the said company of a Certificate of Consolidated Title in respect of -

- 1) Erf 1505 Roodekop Township
Registration Division I.R., Province of Gauteng
measuring 8 741 (eight seven four one) square metres
Held by deed of transfer T69869/2002

and

¹ See **Example 9 B** in Part 4 of Self -Study Deeds Course for Attorneys.

² Since 1 May 2011 (the coming into operation of the new Companies Act 71 of 2008) no brackets is to be placed around the word "proprietary". However, if the suffix is abbreviated, brackets should still be placed around the (Pty).

- 2) Erf 1507 Roodekop Township
Registration Division I.R., Province of Gauteng
measuring 8 741 (eight seven four one) square metres
Held by deed of transfer T69869/2002
and
- 3) Erf 1509 Roodekop Township
Registration Division I.R., Province of Gauteng
measuring 8 741 (eight seven four one) square metres
Held by deed of transfer T69869/2002
and
- 4) Erf 1511 Roodekop Township
Registration Division I.R., Province of Gauteng
measuring 8 741 (eight seven four one) square metres
Held by deed of transfer T69869/2002

which properties on consolidation will be known as -

Erf 1512 Roodekop Township³
Registration Division I.R., Province of Gauteng
measuring 34 964 (three four nine six four) square metres

as will appear from consolidation diagram S.G. 8503/2002.

Signed at Johannesburg on this 14 September 2011.

On behalf of Trident Steel (Pty) Ltd
[10]

³ All the pages of the consolidation diagram have not been provided. Thus you did not have in your possession the page on which the new consolidated property description together with its extent is indicated on. Therefore you had to make up a number and you had to add up the extents of the individual components in order to come up with the correct extent.

Form O

CONVEYANCER
Le Roux GJ**CERTIFICATE OF CONSOLIDATED TITLE** ⁴

WHEREAS -

Trident Steel Proprietary Limited
Registration number 1972/006101/07

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

AND WHEREAS the said company is the registered owner of:

- 1) Erf 1505 Roodekop Township
Registration Division I.R., Province of Gauteng
Held by deed of transfer T69869/2002
and
- 2) Erf 1507 Roodekop Township
Registration Division I.R., Province of Gauteng
Held by deed of transfer T69869/2002
and
- 3) Erf 1509 Roodekop Township
Registration Division I.R., Province of Gauteng
Held by deed of transfer T69869/2002

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

- and
- 4) Erf 1511 Roodekop Township
Registration Division I.R., Province of Gauteng
Held by deed of transfer T69869/2002

which have been consolidated into the land hereinafter described.

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

Trident Steel Proprietary Limited
Registration number 1972/006101/07

its successors in title or assigns, is the registered owner of

Erf 1512 Roodekop Township
Registration Division I.R., Province of Gauteng
measuring 34 964 (three four nine six four) square metres

as will appear from consolidation diagram S.G. 8503/2002 annexed hereto.

The property held hereunder is subject to the following conditions:⁵

- A Neither the owner nor any other person shall have the right, save and except to prepare the erf for building purposes to excavate therefrom any material without the written consent of the Local Authority.
- B Subject to the following condition imposed in favour of the Eco Homeowners Association NPC registration number 1999/028490/08:⁶
- 1 Every owner of the erf or any subdivision thereof or any interest therein or any unit thereon, as defined in the Sectional Title Act, 1986, shall become and shall remain a member of the Eco Homeowners Association.

⁵ Condition A in Deed of Transfer T69869/2002, pertaining to mineral rights must be omitted from the certificate, as all mineral right conditions must be omitted from subsequent deeds - (CRC2/2011). See paragraph 4.8 in Chapter 4 of Self-Study Deeds Course - part 1.

⁶ Where a company is described the conditions of title, it is practice to refer to the new applicable suffix as prescribed by the new Companies Act.

- 2 The owner of the erf or any subdivision thereof or any interest therein or any unit thereon as defined in the Sectional Titles Act, 1986, shall not be entitled to transfer the erf or any subdivision thereon or any interest therein or any unit thereon without a clearance certificate from the Eco Homeowners Association to confirm that all the levies due to it has been paid.
- C The former Erf 1505 Roodekop Township depicted by the figure AmJK on the attached diagram SG No. 8503/2002 is subject to the following condition⁷ The property is subject to a right of way servitude, indicated by the figure ArsK on attached consolidation diagram S.G. no. 8503/2002⁸ in favour of Erf 1503 Roodekop Township as will more fully appear from Notarial Deed of Servitude K123/1982 with diagram S.G. No. A1907/1981 annexed thereto.
- D The former Erf 1511 Roodekop Township, depicted by the figure pBCD on attached consolidation diagram S.G. No. 8503/2002 is subject to the following condition -⁹ The property is further subject to a right of way servitude, indicated by the figure tBCu on attached consolidation diagram S.G. No. 8503/2002¹⁰ in favour of Erf 1513 Roodekop Township, as will more fully appear from Notarial Deed of Servitude K124/1982 with diagram S.G. No. A1911/1981 annexed thereto.

And further subject to such conditions as are mentioned or referred to in the aforesaid deeds.¹¹

⁷ As only Erf 1505 Roodekop is subject to this condition, the condition has to be qualified by introducing the introductory sentence wherein a reference is made to the figure on the consolidation diagram by which the said erf is indicated.

⁸ This information can be found in servitude note nr. 1 on consolidation diagram S.G. no. 8503/2002.

⁹ As only erf 1511 Roodekop township is subject to this condition, again this condition must be qualified by referring to the lettering on the consolidation diagram by which the relevant erf is depicted.

¹⁰ This information can be found in servitude note no. 2 on the consolidation diagram.

¹¹ This general conditional clause is not applicable in the deeds registries for Cape Town, Pietermaritzburg, Bloemfontein and Vryburg.

AND THAT by virtue of these presents, the said Trident Steel Proprietary Limited, its successors in title 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 Johannesburg on this ____ day of _____ .

Registrar of Deeds
[25]

Form WW**Application and consent in terms of section 40(5)(a)¹²**
of the Deeds Registries Act 47 of 1937

I, the undersigned,

Remmington Steele in my capacity as director and duly authorised thereto by virtue of a resolution of

Trident Steel Proprietary Limited
Registration number 1972/006101/07

having applied for the issue of a Certificate of Consolidated Title in respect of
Erf 1512 Roodekop Township
Registration Division I.R., Province of Gauteng
measuring 34 964 (three four nine six four) square metres

represented on consolidation diagram S.G. 8503/2002

comprising

- 1) Erf 1507 Roodekop Township
Registration Division I.R., Province of Gauteng
measuring 8 741 (eight seven four one) square metres
and
- 2) Erf 1509 Roodekop Township
Registration Division I.R., Province of Gauteng
measuring 8 741 (eight seven four one) square metres
and
- 3) Erf 1511 Roodekop Township
Registration Division I.R., Province of Gauteng
measuring 8 741 (eight seven four one) square metres

mortgaged under mortgage bond B98439/2002

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.

¹² See **example 9G** in the Self-Study Deeds Course for Attorneys (Part 4), practical examples.

Signed at Johannesburg on 14 September 2011.

As witnesses

1 _____

2 _____

R Steele obo Trident Steel (Pty) Ltd

and I, the undersigned, Abe Abeba, the signing officer of

ABSA Bank Limited

Registration number 1986/004794/06

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 Johannesburg on 15 September 2011.

As witnesses

1 _____

2 _____

A Abeba obo ABSA Bank Ltd [15]

Question 2 - Model answer

[15]

Purchaser: Deon Ford

Property: Unit 5 Camberwell Court

Paid	Purchase Price	800 000,00	
Received	Deposit on purchase price		110 000,00
Received	Guarantees for purchase price		680 000,00
Paid	Transfer costs (including transfer duty)	17 400,00	
Received	Transfer duty		6 000,00
Paid	Occupational rental (1/2/2011-28/2//2011)	8 000,00	
Paid	Occupation rental (1/3/2011-31/03/2011)	8 000,00	
Paid	Occupation rental (1/4/2011-30/4/2011) ¹³	8 000,00	
Paid	Pro rata levies to body corporate (1/02/2011-30/04/2011)	1 500,00	
Paid	Pro rata rates & taxes to local authority (1/02/2011-30/04/2011)	1 200,00	
Total			796 000,00
	<i>balance owed by you</i>		<i>48 100,00</i>
Balances		844 100,00	844 100,00

Balance owed by you

48 100,00

¹³ Actually the purchaser will only be liable to pay occupational rental until the day preceding the date of registration, as he already is the owner of the property on date of registration (30 April) and cannot pay occupational rental to himself. If this was your view, the occupational rental would here have been calculated as follows, namely -
 $R8\,000,00 \div 30 \times 29 \text{ days} = R7\,733,33$ in stead of R8000,00.

However, it should be borne in mind that this is not the final statement for the purchaser, as the purpose is to ascertain whether you have enough money available from the purchaser's side to enable you to proceed with registration of the transaction. Therefore the calculation in the model answer is sufficient.

Question 3 - Model answer

[30]

3.1

Prepared by me

CONVEYANCER

Frantzen E

Power of Attorney to pass transfer¹⁴

We, the undersigned,

Miguel Lognoul and Antoin Strauss

in our capacities as trustees of the body corporate of the sectional title scheme known as Jolene, number SS159/2010, duly authorised thereto by virtue of a unanimous resolution¹⁵ dated 1 September 2011

do hereby appoint Gabriel Jacobus le Roux and/or Erinda Frantzen with power of substitution to be my lawful attorney and agent and to appear before the Registrar of Deeds at Pretoria and there to declare that -

Whereas buildings on Erf 35 Green Point, of which the undermentioned transferee is the registered owner encroach on Erf 36 Greenpoint, on which a sectional title scheme has been established known as Jolene, number SS159/2010;

And whereas buildings in the said sectional title scheme, established on Erf 36 Green Point encroach on Erf 35 Green Point;

And whereas the respective encroachments are of similar size and the owner of Erf 35 Green Point and the body corporate of the scheme established on Erf 36 Green Point have agreed to exchange the land on which the respective encroachments are in existence;

And whereas simultaneously with this transfer the body corporate is to receive transfer of Portion 1 of Erf 35 Green Point, measuring 200 (two hundred) square metres, in exchange for the undermentioned property;

Now therefore we hereby authorise the appearer to transfer to -

¹⁴ Also see **Example 5D** where this question has been asked before.

¹⁵ The members of the body corporate together with the holder of a real right of extension in the scheme, may in terms of section 17 of the Sectional Titles Act, 1986, by **unanimous resolution** direct the body corporate to alienate a part of the common property. The body corporate shall thereupon have to power to deal with such part of the common property in accordance with the direction and execute any deed required for such purpose.

John Smith
Identity Number 590127 5151 083
married, which marriage is governed by the laws of Zimbabwe

the following property namely -

Portion 1 of Erf 36 Green Point Township
Registration Division J.R., Province of Gauteng
measuring 200 (two hundred) square metres

As will appear from subdivisional diagram S.G. no. 1532/2011

Signed at Pretoria on this the 14 th day of September 2011.

As Witnesses

1 _____
M Lognoul

2 _____
A Strauss [18]

3.2 As will appear from annexed diagram S.G. No 1532/2011 and held by Deed
of Transfer T75879/2010.¹⁶ [6]

3.3 **Documents to be lodged in the deeds registry**

- 1 **Concept deed of transfer** for portion 1 of Erf 36 Green Point
- 2 **Power of attorney** to pass transfer
- 3 **Transfer duty receipt**
- 4 **Rates clearance certificate** for the portion
- 5 **Subdivisional diagram** for the portion
- 6 **Consent to subdivision** by the local authority together with the conditions for subdivision
- 7 Certificate by the local authority that **all conditions of subdivision have been complied with**
- 8 **Copy of unanimous resolution** certified by two trustees of the body corporate for the alienation of the portion of the common property
- 9 **All bonds** registered over undivided shares in the common property
- 10 Written **consent of all the mortgagees** in terms of section 56 of the Deeds Registries Act for the disposal in respect of the portion concerned. [6]

¹⁶ This title deed number represents the title deed number of the title deed whereby Erf 36, was held at the time when the scheme was opened on Erf 36. As the portion falls back to the land register, this title deed is revived.

Question 4 - Model answer

[20]

Prepared by me

CONVEYANCER

Frantzen E

Power of Attorney to pass transfer¹⁷

We, the undersigned,

Mort Deadhappy

in my capacity as executor in the estate of the late Raymond Louis Lombard,
estate number 7891/2009

duly authorised thereto by virtue of letter of executorship issued by the
Master of the High Court, Cape Town on 28 August 2009

and

Joyce Elizabeth Lombard

Identity number 560808 0243 08 0

unmarried, in my 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 our lawful attorney and agent to appear before the
Registrar of Deeds at Cape Town and there to declare that -

Whereas the said Joyce Elizabeth Lombard, identity number 560808 0243 08 0,
who was married in community of property to the said late Raymond Louis
Lombard, who died on 25 April 2009, who as his surviving spouse, is entitled to a
one half share in the undermentioned property by virtue of her marriage in
community of property to the deceased;

And whereas in terms of the joint will dated 16 February 2000 of the late Raymond
Louis Lombard who died on 25 April 2009 and his surviving spouse Joyce
Elizabeth Lombard to whom he was married in community of property, the ½ (one
half) share of the deceased in the undermentioned property was bequeathed to
their son, Ivan Victor Lombard, married in community of property to Joan Lena
Lombard, subject to the exclusion of the community of property as more fully set
out hereunder;

And whereas the surviving spouse, Joyce Elizabeth Lombard and Ivan Victor
Lombard have entered into a redistribution agreement dated 14 November 2009 in

¹⁷ Also see **Example 5 E** where the exact same question was asked.

respect of the undermentioned immovable property to the effect that Ivan Victor Lombard shall be entitled to the whole undermentioned property, subject to a life long usufruct in favour of the surviving spouse, as are more fully set out hereunder;

Now therefore we hereby authorise the appearer to transfer to -

Ivan Victor Lombard

Identity Number 790106 5053 08 2

married in community of property to Joan Lena Lombard, with the exclusion of the community of property in respect of the property mentioned herein as a result of the condition contained in the joint will of the late Raymond Louis Lombard and surviving spouse Joyce Elizabeth Lombard dated 16 February 2000

the following property namely -

Erf 35693 Cape View

situated in the City of Cape Town, Division Cape, Western Cape Province measuring 2 000 (two thousand) square metres

Held by deed of transfer T21518/1985

- 1 Subject to the following conditions contained in the joint will of the late Raymond Louis Lombard and surviving spouse Joyce Elizabeth Lombard dated 16 February 2000, namely:
“Any benefit acquired in terms of my will shall remain the property of the beneficiary concerned and be excluded from any community of property or community of profit or loss and shall be free from the marital power which might apply to any marriage.”

- 2 Subject to the following condition as set out in the redistribution agreement by and between Ivan Victor Lombard and Joyce Elizabeth Lombard dated 14 November 2009, namely -
“Subject to a life long usufruct in favour of -
Joyce Elizabeth Lombard
Identity number 560808 0243 08 0
unmarried

Signed at Cape Town on this the 14 th day of September 2011.

As Witnesses

1 _____

M Deadhappy

2 _____

JE Lombard

Question 5 - Model answer

[25]

5.1

Prepared by me

CONVEYANCER

Le Roux GJ

Power of Attorney to pass transfer

We, the undersigned,

Lee-Anne Fortuin in my capacity as co-executor and John Pringle in my capacity as nominee of Best Bank Limited, Registration number 1980/247963/06 and as such the co-executor in the estate of the late Mariaan Naude, estate number 852/2008 duly authorised thereto by virtue of letter of executorship issued by the Master of the High Court at Pietermaritzburg on 15 December 2008

do hereby appoint Gabriel Jacobus le Roux and/or Erinda Frantzen with power of substitution to be our lawful attorney and agent to appear before the Registrar of Deeds at Pietermaritzburg and there to declare that -

Whereas in terms of the will dated 24 October 2006 of the late Mariaan Naude who died on 8 May 2008, the undermentioned unit together with an exclusive use area described as carport CPT8 was bequeathed to her children in equal shares, subject to the exclusion of the community of property as more fully set out hereunder;

Now therefore we hereby authorise the appearer to transfer to -

- 1 Lee-Anne Fortuin
Identity Number 781010 0093 00 1
married out of community of property
- 2 Patricia Pattison
(Born on 18 August 1973)
Identity number 730918 0039 08 9
unmarried
- 3 Vivienne Hartley
Identity number 761204 0481 08 5
married in community of property to Peter Hartley, 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 Mariaan Naude dated 24 October 2006

the following property namely -

A unit consisting of-

- a) Section 11 as shown and more fully described on sectional plan SS193/1999 in the scheme known as Oakwood, in respect of the land and building or buildings situate at Durban, in the eThekweni Municipality Area, of which section the floor area according to the sectional plan is 180 (one hundred and eighty) 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 ST3791/2000

Subject to the following condition imposed by the will of the late Mariaan Naude dated 24 October 2006, namely -

“The inheritance of my heirs shall not form part of the community of property of a present or future marriage.”

Signed at Durban on this the 14 th day of September 2011.

As Witnesses

1		
		Lee-Anne Fortuin
2		
		John Pringle [15]

5.2 Documents to be lodged in the deeds registry

- 1 Concept **deed of transfer**
- 2 **existing title deed**
- 3 **power of attorney** to pass transfer
- 4 **transfer duty exemption certificate**
- 5 **rates clearance certificate** iro the unit
- 6 **section 15B(3)(a)** of the Sectional Titles Act, conveyancer’s certificate
- 7 copy of the **will**, certified and endorsed as accepted by the master
- 8 **s 42(1)** of the Administration of Estates Act conveyancer’s certificate
- 9 copy of the **affidavit of next-of-kin**, certified by the master
- 10 **notarial deed of cession** of exclusive use area
- 11 **existing notarial deed** of cession of exclusive use area
- 12 **rates clearance certificate** and **transfer duty exemption certificate** for the exclusive use area (if not already indicated on the transfer duty exemption certificate and clearance certificate iro the unit)
- 13 Existing **bonds** and consent by the **mortgagee(s)** [10]

Question 6 - Model answer

6.1

[30]

Prepared by me

CONVEYANCER

Frantzen E

Application in terms of Section 45bis(1)(a) of the Deeds Registries Act 47 of 1937¹⁸

We, the undersigned,

Bob Mvula

Identity number 651212 5095 08 8

and

Dorris Mvula 670116 0073 08 2

Identity number

married in community of property to each other

do hereby declare that -

Whereas Erf 1234 Kimberley

situated in the Sol Plaatjie Municipality, District Kimberley, Province
Northern Cape

measuring 1000 (one thousand) square metres

Held by Deed of Transfer T14654/1996

is registered in the name of the abovementioned Bob Mvula and in the name of his
former spouse Betty Buhla (previously Mvula), identity number 650917 0008 08 4;

And whereas Bob Mvula

Identity number 651212 5095 08 8

Married in community of property to Dorris Mvula

was married in community of property to Betty Buhla (previously Mvula), which
marriage has been dissolved by a final divorce court order issued by the High Court
of South Africa under case number 3359/2010 dated 15 June 2010;

And whereas the settlement agreement which was made an order of the court did
not deal with the abovementioned immovable property;

But whereas Betty Buhla (formerly Mvula)

Identity number 650908 0085 08 1

¹⁸ A similar question has been asked in May 2006, question 2.

and

Joe Buhla

Identity number 600204 5467 08 1

married in community of property to each other

have by virtue of an addendum to the deed of settlement dated 20 August 2011, sold their one half share in the above property to the said John Mvula and Dorris Mvula for R600 000,00;

Now therefore we hereby apply to the registrar of deeds at Kimberley for the endorsement of Deed of Transfer T 14654/1996 in terms of section 45bis(1)(a) of the Deeds Registries Act 47 of 1937 to the effect that we are entitled to the abovementioned property, one half share due to the in community of property marriage between Bob Mvula and Betty Buhla (previously Mvula) and the other one half share due to the addendum to the settlement agreement aforementioned, as if we have received formal transfer thereof.

Signed at Kimberley on 14 September 2011

Bob Mvula

Dorris Mvula

Form T

CONVEYANCER
Frantzen E

Consent

We, the undersigned

Bob Mvula

Identity number 651212 5095 08 8 and

Dorris Mvula

Identity number 670116 0073 08 2

married in community of property to each other

the mortgagor under mortgage bond B3214/1996 passed by me,

Bob Mvula

Identity number 651212 5095 08 8 and

Betty Buhla (previously Mvula)

Identity number 650917 0008 08 4

married in community of property to each other

in favour of ABC Bank Limited for the sum of R600 000,00 do hereby -

- 1 Consent to the release of the said Betty Buhla (previously Mvula) and Joe Buhla, identity number 601213 5789 08 8, married in community of property to each other from liability under the said bond;
- 2 assume full liability for all indebtedness under the said bond; and
- 3 consent to the substitution of ourselves as the sole debtor in respect of the said bond.

Signed at Kimberley on 14 September 2011.

As witnesses 1 _____

Bob Mvula

2 _____

Dorris Mvula

AND

I, the undersigned Edward Steward, duly authorised thereto by virtue of a resolution of the directors of **ABC Bank Limited, Registration number 1960/012349/06**, being the legal holder of the aforementioned bond, do hereby consent to the release, assumption of liability and substitution of debtor as aforesaid.

Signed at Kimberley on 15 September 2011.

As witnesses 1 _____

2 _____

E Steward obo ABC Bank Ltd [22]

- 6.2 **Additional documents to be lodged in the deeds registry**
- 1 **Deed of Transfer T14654/1996** for endorsement
 - 2 **transfer duty exemption certificate**
 - 3 **rates clearance certificate**
 - 4 certified copy of the **divorce order** and **settlement agreement**
 - 5 certified copy of the **addendum to the settlement agreement**
 - 6 **mortgage bond B3214/1996** [7]
- 6.3 No transfer duty is payable, as the payment thereof is exempt in terms of section 9 of the Transfer Duty Act. [1]

Question 7 - Model answer [10]

7.1 Prepared by me
Form H
CONVEYANCER
Le Roux GJ

Deed of Transfer

[by virtue of section 33 of the Deeds Registries Act, 1937 (No. 47 of 1937)]

Be it hereby made known:

That in obedience of an Order of the High Court, Grahamstown on 12 December 2010, I, the Registrar of Deeds at King Williams Town by virtue thereof, cede and transfer in full and free property to and on behalf of

Alfred Scott

Identity number 501214 5487 08 4

and

Doris Day

Identity number 601219 0008 08 2

married in community of property to each other

their heirs, executors, administrators or assigns certain

- 1 Erf 56 East London
Local Municipality of Buffalo City, Division East London, Province Eastern Cape
measuring 360 (three hundred and sixty) square metres

First transferred by Deed of Transfer T167/1932 with general plan S.G. no. 4879/1932 relating thereto and held by Deed of Transfer T1258/1969

Subject to all such conditions as are mentioned or referred to in the aforementioned deeds

- 2 Erf 57 East London
Local Municipality of Buffalo City, Division East London, Province Eastern Cape
measuring 360 (three hundred and sixty) square metres

First transferred by Deed of Transfer T1597/1932 with general plan S.G. No. 4879/1932 relating thereto and held by Deed of Transfer T1258/1969

Subject to all such conditions as are mentioned or referred to in the aforementioned deeds

- 3 Erf 58 East London
Local Municipality of Buffalo City, Division East London, Province Eastern Cape
measuring 360 (three hundred and sixty) square metres

First transferred by Deed of Transfer T3/1933 with general plan S.G. No 4879/1932 relating thereto and held by Deed of Transfer T1258/1969

Subject to all such conditions as are mentioned or referred to in the aforementioned deeds

[7]

7.2 Supporting documents to be lodged at the deeds registry

- 1 **Existing title deed(s)** for the three properties (T1258/1972), if available. If not, an **affidavit** by the transferee that he has been unable to obtain possession of the title deed
- 2 **transfer duty receipt** for the three properties
- 3 **clearance certificate** for the three properties
- 4 certified copy of the **court order**
- 5 **marriage certificate** and **affidavit** regarding the in community of property marriage by Alfred Scott and Doris Day [3]

Question 8 - Model answer

[20]

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

SECTIONAL PLAN : SG. No. D123/2011

NAME OF SCHEME: Morning Star

NAME AND ADDRESS
OF THE DEVELOPER The Trustees of the ABC Trust
Registration number IT 8183/2005
of 57 Adderley Street
Cape Town
2000

NUMBER OF THE TITLE DEED OF THE
LAND CONCERNED: T1/2007 and T2/2007

NUMBER OF THE TITLE WHERE THE
DIAGRAM IS FILED General plan S.G. No 285/2001 is filed
with T357/2001 and T159/2001

I the undersigned

Erinda Frantzen
a conveyancer, practising as such in Cape Town, do hereby certify that the
property known as -

- 1 **Erf 123 Belville**
City of Cape Town, Division Cape, Province Western Cape
measuring 1 000 (one thousand) square metres
Held by deed of transfer T1/2007

is subject or entitled to the following conditions:

- A No trade or business in wine, spirits or beer shall be carried on on the said property
- B The property is subject to a 2 metres wide servitude for municipal purposes in favour of the Belville Local Municipality together with ancillary rights as will more fully appear from Notarial Deed No. K44/2006S with diagram annexed thereto.
- C The property may not be transferred without the written consent of the Local Authority.¹⁹
- D Erf 123 Belville and Erf 124 Belville are tied together and shall for all intents and purposes be regarded as one property and neither one of the two properties may be transferred, alienated or disposed of other than to the same person, as will more fully appear from Notarial Deed of Tie Agreement K S.

2 Erf 124 Belville
City of Cape Town, Division Cape, Province Western Cape
measuring 1 500 (one thousand five hundred) square metres
Held by deed of transfer T2/2007

is subject or entitled to the following conditions:

- A Subject to conditions A and D more fully set out in paragraph 1 hereof.
 - B The property is subject to a 5 metres wide right of way servitude in favour of Highbrow Holdings (Proprietary) Limited as will more fully appear from Notarial Deed No. K100/2006S with diagram annexed thereto.
- 3 The developer has reserved itself and its successors in title the right to erect and complete from time to time within a period of 30 (thirty) years for his personal account a further building or buildings ²⁰ on the specified portion of

¹⁹ As the general condition clause (“and further subject to all such conditions as are mentioned or referred to in the aforesaid deeds”) is not inserted in the Cape Town deeds registry, this clause has been omitted.

²⁰ and/or a vertical extension of an existing building and/or a horizontal extension of an existing building, depending on the facts of the particular case.

the common property as indicated on the plan referred to in section 25(2)(a) of the Act, filed in the office of Cape Town, and to divide such building or buildings into a section or sections and common property and to confer the right to exclusive use over a portion of such common property upon the owner or owners of one or more units in the scheme.²¹

4 The developer has further imposed the following condition in terms of section 11(2) of the Sectional Titles Act No. 95 of 1986, namely:-²²

- 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.

5 No further conditions were imposed by the Developer.

Signed at Cape Town on 14 September 2011.

CONVEYANCER
[200]

TOTAL

²¹ The wording of the real right as set out in Form F (certificate of real right of extension) can be followed here.

²² 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:-

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

Model Answers to the Conveyancing Examination

September 2011

Part 2

Self-Study Deeds Course

Question 1 - Model answer

[6]

The three exceptions are -

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

Question 2 - Model answer

[4]

- a If a transaction is VAT exempt, it falls outside of the “VAT net” altogether. Accordingly transfer duty is payable on the transaction. The position is therefore the same as if the seller were never registered for VAT.
- b If a transaction is zero-rated, it still falls within the “VAT net” and all the provisions relating to VAT apply to the transaction, including the provision that the purchaser can still claim input tax credits in respect of the property concerned. Only the rate is “0%” in stead of “14%” (currently).

Question 3 - Model answer

[10]

- 4.1 The parties place on record that -
 - 1) the property is sold as a going concern, being the lease of premises for business purposes.
 - 2) the concern will, on the date hereof, be an income generating enterprise.

- 3) the seller is a registered VAT vendor, with VAT registration number 4880125659
- 4) the purchaser is a registered VAT vendor, with VAT registration number 4320177601.

4.2 If the South African Revenue Service rules that this transaction does not qualify for a zero rating, the purchaser will be responsible for the payment of VAT in addition to the purchase price.

Question 4 - Model answer

[5]

Transfer duty should first be calculated on the value of the whole property (in other words on R2 000 000,00) whereafter the amount of transfer duty payable must be, in this instance, divided by two. Thus:

R 0,00 - R600 000,00 x 0%	= R	0,00
R 600 001,00 - R1 million x 3% (thus R400 000,00 x 3%)	= R	12 000,00
R1 million - R1,5 million x 5% (thus R500 000,00 x 5%)	= R	25 000,00
over R1,5 million x 8% (thus R500 000,00 x 8%)	=	<u>R 40 000,00</u>
TOTAL	=	R 77 000,00

R77 000,00 ÷ 2 = **R 38 500,00 transfer duty payable in respect of the ½ half share in the property.**

Question 5 - Model answer

[5]

- 5.1 It indicates that the company is a personal liability company [1]
- 5.2 It indicates that the company is a private company [1]
- 5.3 It indicates that the company is a public company [1]
- 5.4 It indicates that the company is a state-owned company [1]
- 5.5 It indicates that the company is a non-profit company [1]

Question 6 - Model answer

[5]

Yes. If the property which is registered in the name of the solvent spouse has not at the time of registration of the bond, been released by the trustee of the estate of the insolvent spouse, the mortgagee cannot acquire a secured or preferent right and as far as the insolvent's trustee is concerned, the registration of the bond is a nullity. (*De Villiers NO v Delta Cables (Pty) Ltd* 1992 (1) SA 9 (AD)).

Question 7 - Model answer

[5]

Section 88 of the Insolvency Act stipulates that a mortgage bond (passed for the repayment of existing debt) should be lodged with the registrar within two months after the debt was incurred. If the mortgage bond is not lodged within two months, the mortgagee (creditor) will not be entitled to a preferential claim if the mortgagor is declared insolvent within six months after lodgement.

As A has already lent the money to B more than two months ago, A shall not have a preferential claim if B is declared insolvent within six months after the lodgement of the bond in favour of A.

Question 8 - Model answer

[3]

A conveyancer attending to the registration of a mortgage bond in favour of a bank or financial institution must make sure that -

- i) the home builder is registered in terms of the Housing Consumer Protection Measures Act;
- ii) has enrolled the home with the Council; and
- iii) has paid the prescribed fees in respect of the enrolment.

Question 9 - Model answer

[2]

Capital gains tax, is a tax imposed on the capital gains for a year of assessment in respect of an asset disposed of, included in the taxpayer's taxable income for the year of assessment which is then in question.

Question 10 - Model answer ²³

[18]

- 10.1 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]
- 10.2 His surviving wife is entitled to R125 000,00 (as this amount is higher than a child's share of R83 333,33).
The child born from the marriage as well as the child who was accepted in accordance with customary law as the deceased's own child shall each share equally in the remaining money, in other words each shall be entitled to R62 500,00. [4]

²³ A similar question was asked in September 2008 (Part 2), Question 8 for 12 marks and in September 2009 (Part 1) Question 16 for 12 marks.

10.3 His father is entitled to 50% of his estate, namely R300 000,00. The survivors on his mother's side are entitled to the other half. His two brothers are therefor entitled to R100 000,00 each and the two children of his deceased sister are entitled to R50 000,00 each. [4]

10.4 His wife, the child born from their marriage and their adopted child are each entitled to R160 000,00. The stepchild is not entitled to inherit from him according to intestate succession. [6]

Question 11 - Model answer [3]

Having been born out of wedlock shall not affect the capacity of one blood relation to inherit the intestate estate of another blood relation. This is the case notwithstanding the provisions of any law or the common law or customary law, but subject to the provisions of the Intestate Succession Act and section 40(3)²⁴ and 297(1)(f)²⁵ of the Children's Act.

Question 12 - Model answer²⁶ [7]

12.1 Yes. According to Registrar's Conference Resolution 5 of 2005, whenever a personal servitude is cancelled either in terms of the provisions of section 68(1) - (noting of lapsing of servitude) or 68(2) - (notarial cancellation of servitude) of the Deeds Registries Act, a transfer duty receipt or transfer duty exemption certificate must be lodged, except is the servitude has served its time. From the facts in the question, the exception is not applicable and therefore a transfer duty receipt or exemption certificate has to be lodged. [2]

12.2 I will lodge an application, signed by the registered owner of the property over which the usufruct has been registered, in terms of section 68(1) of the Deeds Registries Act for the noting of the lapsing of the usufruct. I will also

²⁴ According to section 40(3) of the Children's Act, no right arises between a child born of a woman as a result of artificial fertilisation and any person whose gamete has been used for such artificial fertilisation or the blood relations of that person except when -
a) that person is the woman who gave birth to that child; or
b) that person was the husband of such woman at the time of such artificial fertilisation.

This section is subject to section 296, dealing with artificial fertilisation of a surrogate mother.

²⁵ According to section 297(1)(f) of the Children's Act the child will have no claim for succession against a surrogate mother, her husband or partner or any of their relatives.

²⁶ A similar question was asked in May 2008 (Part 2), Question 2 and May 2009 (Part 2) Question 9, for 7 marks.

lodge the death certificate or death notice as proof of death. An endorsement to that effect will then be attached to the title deed. [3]

12.3 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]

Question 13 - Model answer [6]

13.1 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]

13.2 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.²⁷ [4]

Question 14 - Model answer²⁸ [10]

14.1 As will appear from general plan S.G. no. 13/2010 and held by Certificate of Consolidated Title T1234/1998. [3]

14.2 First transferred and still held by Deed of Transfer T222/2010 with general plan S.G. No. 13/2010 relating thereto. [3]

14.3 First transferred and still held by Deed of Transfer T222/2010 with general plan S.G. no. 13/2010 relating thereto in respect of one-half share and held by Deed of Transfer T25/2011 in respect of the other one-half share. [4]

Question 15 - Model answer [5]

The Consumer Protection Act requires that consumer agreements must be in plain and understandable language, so that an ordinary person with average literacy skills and minimal experience as a consumer of the relevant goods or services can understand the content, significance and import of the provisions.

The following factors should be taken into account when an effort is made to make a document “plain language “- compliant:

²⁷ 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

²⁸ A similar question has been asked in May 2010 (Part 2), Question 10 for 10 marks.

- 1) the class of persons for whom a document is intended;
- 2) the context, comprehensiveness and consistency of the document;
- 3) the manner, form and style in which the representation/document is done;
- 4) the sentence structure and vocabulary used; and
- 5) the use of aids such as illustrations, examples and headings.

Question 16 - Model answer

[6]

Any three of the following:

- 1) **S 34(1):** Any person who is a joint owner of a piece of land, held by such person and others under one title deed, may obtain a certificate of registered title (CRT) in respect of his/her undivided share in such land. This section shall apply with the necessary changes to any person who is the owner of the whole or a share in a piece of land and whom wishes to obtain a CRT of any fraction of his undivided share in such land - section 34(1A).
- 2) **S 34(2):** If the title deed under which land or shares therein is held in joint ownership, is lost or destroyed, any joint owner may obtain a CRT in respect of his/her share in the land without first obtaining a certified copy of the lost or destroyed deed.
- 3) **S 35:** Any person who is, by virtue of more than one title deed, the owner of undivided shares in one or more pieces of land, may obtain a CRT in respect of his aggregate share in the land.
- 4) **S 36:** Any person who holds two or more pieces of land under one title deed, may obtain a CRT for one or more of these properties: provided that at least one property or share remains under the title deed.
- 5) **S 38:** Where the client's copy of a title deed and the deeds office's copy thereof is lost or destroyed, the owner may apply for the issue of a CRT in respect of such land in accordance with the diagram of the land.
- 6) **S 39(1):** If, by reason of an error, the same land has been registered in the names of different persons, the registrar may, after the land has been transferred to the legal owner, issue to the legal owner thereof a CRT for the land which is owned by him under different title deeds.
- 7) **S 39(2):** This section provides for the issue of a clean title where the existing title reflects conditions which have been duly noted therein as having lapsed or been cancelled. The only way to clear the title deed from conditions which are no longer applicable, is to obtain a CRT, free from such conditions.
- 8) **S 43(1):** Where the owner subdivides his land into two or more portions and wishes to hold those portions under separate titles, he may make an application to the effect that a CRT be issued to him in respect of a portion (or portions) of his land.

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

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
The Consolidated Practice Manuals of the Deeds Office of South Africa
Relevant acts, regulations and prescribed forms
Registrar's Conference Resolutions