

**CONVEYANCING PRACTICE
PART 2**

14 APRIL 2021

MEMORANDUM

GENERAL NOTE AND DISCLAIMER: This memorandum serves as a guideline to candidates to prepare for the conveyancing examination. The information is provided in good faith by the Law Society of South Africa (LSSA) and the LSSA, the drafters and the examiners will not be liable for any errors or omissions.

The content of the memorandum may not reflect the most current development. Further, there may be justifiable variations in practice which are brought out in the answers.

The purpose of questions that require drafting is to ensure that the candidate can properly draft documents to be registered. Answers that are not exactly the same as those contained in this memorandum but which are nonetheless correct, will be marked accordingly.

Descriptions of parties, properties and extending clauses are extremely important as the Deeds Offices do not allow any deviations and accuracy is thus extremely important.

QUESTION 1

[20]

[Note: **Study Section 15B(3)** of the Sectional Titles Act, and Sections 8(1)(c), 8(3) 8A and 11A of the Share Blocks Control Act 59 of 1980, as well as Schedule 1 to the said Act. Also study s 4(3)(b) STA.]

Words in square brackets [] are added for explanatory purposes and need not be included in the answer.

1.1

CONVEYANCER'S CERTIFICATE

In terms of Section **15B(3)** of the Sectional Titles Act 95 of 1986

I, the undersigned, ABE ABLEMAN, conveyancer practising in Cape Town (LPCM No 12345) do hereby certify that as at date of registration:

1. THE BREAKERS SHARE BLOCK PROPRIETARY LIMITED
Registration No 2002/001166/07
("the Share Block Company")

is the registered owner and the Transferor of the following property, namely:

- (a) SECTION NO. 20 as shown and more fully described on Sectional Plan No. SS 123/2021 in the scheme known as THE BREAKERS in respect of the land and building or buildings situated at Milnerton, in the City of CAPE TOWN, Cape Division, Province of the Western Cape, of which section the floor area according to the said sectional plan is 200 (TWO 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 virtue of Certificate of Registered Sectional Title No. ST 5674/2021.

2. BENNO BOTHMA

Identity number 520712 5058 08 9
Unmarried

[a shareholder of the Share Block Company and who by virtue of a use agreement is entitled to the use of the aforesaid property] is the transferee of the aforesaid section.

3. The body corporate of the scheme has not yet been established, and therefore no moneys are payable to such body corporate.
4. The Transferor, being the Share Block Company which developed the scheme, has not reserved a Real right of Extension in terms of Section 25 of the Sectional Titles Act.
5. The Share Block Company has confirmed in an affidavit [as contemplated in Item 8(3) of Schedule 1 to the Share Blocks Control Act 59 of 1980] that-
 - 5.1 the Transferee has paid all levies due [in terms of Section 13 of the Share Blocks Control Act 59 of 1980 read with item 8(3) of Schedule 1 to the said Act] to the said company, or that payment thereof has been secured to the satisfaction of the said company;
 - 5.2 the Transferee's share certificate and signed share transfer form has been delivered to the company, together with a waiver of rights, with effect from date of transfer, in respect of his use agreement relating to the portion of the company's property that now comprises the unit [being the documents that are to be returned to the company as required in Item 8(2) and 8(3) of Schedule 1 to the Share Blocks Control Act 59 of 1980].
6. [The transfer of the abovementioned property is pursuant to a written request by the transferee in accordance with Item 8(1)(b) of Schedule 1 to Share Blocks Control Act 59 of 1980, and] The alienation of the said property by the Share Block Company was authorised by a Special Resolution of the company as required in terms of Section 8(1)(c) of the Share Blocks Control Act 59 of 1980.

1.2 Documents to be lodged:

- Existing title deed (the CRST that has been issued to the Share Block Company upon opening of the Sectional Title Register;
- *New draft deed of transfer*
- Power of attorney to pass transfer
- S 158(3) certificate by conveyancer;
- *Affidavit by the developer (the share block company), confirming:*
 - s 10 of the Sectional Titles Act has been complied with, or is not applicable;
 - that the notices of the special resolution, as specified in item 2(3) of Schedule 1, have been dispatched. *[The company must in terms of item 1(c) of Schedule 1 pass a special resolution authorising the company to open a sectional title register in respect of its property. Then, as stipulated in item 2(3), notice of this special resolution must be given to every member of the company, as well as to every person who is entitled to a share in the company and to every creditor of the company with a claim of R500 or more. Item 5 of Schedule 1 to the Share Blocks Control Act then further requires that an affidavit concerning these facts must be lodged in the deeds office.];*
 - that no valid objection against the said resolution for the opening of the scheme was lodged with the company, or if any objections were lodged, that they have been dealt with as specified in item 5(b);
 - any mortgage bonds registered over the land comprising the scheme;
 - if there are any such bonds, then also the consent of the bond holders to cancellation or to the release of unit 20 from under the bond
- Rates clearance certificate by the municipality in respect of the unit;
- Rates clearance certificate by the municipality issued in respect of the land on which the scheme is situated;
- Transfer duty receipt [date of acquisition is the date on which the shareholder signed the written request for transfer, as contemplated in Item 8(1)(b) of Schedule 1 to the Share Blocks Control Act];
- Form W, in triplicate, the form for the certificate of establishment of the body corporate in terms of s 2(1) of the Sectional Titles Management Act 8 of 2011. (The body corporate will be established upon registration of this transfer).
- [Note that you will be penalised if you list a SPLUMA certificate in terms of s 53, if this does not apply in your area of practice. In areas of some Local authorities this is a transfer, not a land development application. Note further, as a matter of interest, that a SPLUMA certificate is NOT needed for opening of a sectional title scheme. The permission of the municipality is not sought, as the land surveyor bears the responsibility to certify towards the Surveyor General that all municipal requirements have been met.]
- [do not lodge the written request by the transferee that the property be transferred to him].

(5)

2.1.1 And the Appearer declared that

WHEREAS in terms of the will dated 31 May 2015 of the late JOHN MABASU who died on 15 March 2019, his estate including the hereinafter mentioned property was bequeathed to his surviving spouse Susan Mabusu to whom he was married out of community of property, subject to a *fideicommissum* in favour of their son Maxwell Mabusu as hereinafter further described, and subject further to the exclusion of community of property:

THEREFORE the Appearer, in her capacity aforesaid, did by these presents cede and transfer to and on behalf of

SUSAN MABASU

Identity number 530819 0068 083
unmarried

her heirs, administrators and assigns, in full and free property... (7)

2.1.2 And the Appearer declared that

WHEREAS the hereinafter mentioned property was transferred to the said Susan Mabusu, now the transferor, as the *fiduciary* in accordance with the terms of the will dated 31 May 2015 of the late John Mabusu who died on 15 March 2019, subject to a *fideicommissum* in favour of the hereinafter mentioned transferee.

AND WHEREAS the said transferor did by virtue of an underhand waiver signed on 22 February 2021 waive all of her right title and interest as fiduciary in the said property.

NOW THEREFORE the Appearer, in his capacity aforesaid, did by these presents cede and transfer to and on behalf of

MAXWELL MABASU

Identity number 781230 5015 08 9

Partner in a civil partnership in community of property registered in terms of the Civil Union Act 17 of 2006, with Joseph Lucky, Identity number 800304 5150 083 and which community of property is excluded by virtue of a condition in the will of the late John Mabusu hereinafter referred to

his heirs, executors or assigns, in full and free property ... (4)

2.2.1 Extending clause in deed of transfer from estate late John Mabusu to Susan Mabusu:

First transferred and still held by Deed of Transfer T 1483/1995 with diagram SG No. A245/1994 annexed thereto. (4)

2.2.2 Extending clause in deed of transfer from Susan Mabusu to Maxwell:

First transferred by Deed of Transfer T 1483/1995 with diagram SG No. A 245/1994 annexed thereto and held by Deed of Transfer T23/2020. (4)

2.3 The transfer from the executor in the estate late John Mabusu to Susan is exempt from transfer duty in terms of Section 9(1)(e)(i) of the Transfer Duty Act 40 of 1949, being "property acquired from the deceased estate by ...testamentary succession".

The transfer from Susan to Maxwell is similarly exempt from transfer duty in terms of Section 9(e)(i) of the Transfer Duty Act. But what of the fact that Maxwell now receives transfer of the property *earlier* than he would have received it (only on death of Susan) because she has renounced her fiduciary right? The value with which the property is enhanced by the renunciation of the right is also exempt from transfer duty, in terms of Section 9(1)(e)(ii) of the Transfer Duty Act. (1)

2.4 Transfer from the executor to Susan: A conveyancer's certificate is required in terms of Section 42(1) of the Administration of Estates Act 66 of 1965, to the effect that the transfer is in accordance with the liquidation and distribution account. (2)

2.5 Documents to lodge in transfer from estate to Susan:

- Power of attorney to pass transfer
 - Existing title deed
 - Draft deed
 - Any mortgage bonds, if any, and consent to cancellation by bondholders
 - Copy of the deceased's will, certified by the Master and endorsed as to acceptance by the Master)
 - S 42(1) certificate by the conveyancer
 - Transfer duty exemption certificate
 - Rates clearance
- (3)

QUESTION 3

[15]

Prepared by me

CONVEYANCER
ABE ABLEMAN
(LPCM NO 34567)

**APPLICATION FOR ENDORSEMENT OF DEEDS IN TERMS OF SECTION 40 OF THE
ADMINISTRATION OF ESTATES ACT 66 OF 1965**

I, the undersigned

PETER HIGGS, in my capacity as the executor in the ESTATE OF THE LATE JOHN SMITH, Estate number 982/2020, duly appointed by virtue of letters of Executorship issued by the Master of the High Court at Cape Town on 20 August 2020

DO HEREBY APPLY to the Registrar of Deeds at CAPE TOWN for the endorsement, in terms of Section 40 of the Administration of Estates Act 66 of 1965, of the undermentioned Deeds which are registered in the name of

JOHN SMITH

Identity number 651109 5014 08 3

Unmarried

to the effect that the immovable property respectively held under said Deeds shall be administered by the trustees, appointed in the Will dated 10 August 2018 of the said late John Smith who died on 4 July 2020, in accordance with the provisions of the said Will:

1. Deed of Transfer T 12/2008, whereby the following property is held, namely-
ERF 12 CAMPERDOWN
in the Overstrand Municipality, Division Caledon, Province of the Western Cape,
MEASURING 600 (SIX HUNDRED) square metres;
2. Deed of Transfer ST 3333/2010, whereby the following property is held, namely-
 - (a) SECTION NO. 3 as shown and more fully described on Sectional Plan No. SS 4123/2008 in the scheme known as HELLFIRE in respect of the land and building or buildings situated at BRIMSTONE, in the City of CAPE TOWN, Cape Division, Province of the Western Cape, of which section the floor area according to the said sectional plan is 200 (TWO 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;
3. Notarial Deed of Cession of Exclusive Use Area SK 123/2010 whereby the following property is held, namely-
EXCLUSIVE USE AREA GI (A GARDEN), measuring 50 (FIFTY) square metres, forming part of the common property and delineated as such on Sectional Plan No SS 4123/2008 in the scheme known as HELLFIRE, situated at BRIMSTONE, in the City of CAPE TOWN, Cape Division, Province of the Western Cape.

SIGNED AT CAPE TOWN ON 20 April 2021.

EXECUTOR

4.1 Property description in bond:

ERF 444 SUMMERTON

In the City of Cape Town, Cape Division, Province Western Cape
MEASURING 496 (Four hundred and ninety-six) square metres

Held by Deed of Transfer T 7739/2018

SUBJECT to the conditions contained therein and especially subject to a registered lease in favour of John Hampshire identity number..... and Joan Identity Number..... Hampshire, married to each other in community of property, preference in respect of which lease is waived in favour of this mortgage bond, as hereinafter set out. (5)

4.2 [NOTE: It is firstly important to understand the structure and timing of waivers: The lease is already registered. It exists. Once the new bond is now registered, the rights of the mortgagee will automatically rank subject to the rights under the lease (*prior in tempore, potior in iure*). For a waiver to be effective, the order of events is thus that the bond must be registered, and then the preference must be waived. It cannot be done the other way round.]

[NOTE ALSO: The waiver can either be contained in a notarial deed or in the bond itself¹. This 'shortcut' method (to create the waiver in the bond itself) is permitted in terms of regulation 41(7) to the ORA. An underhand waiver in terms of s 3(1)(s) such as is normally used where one *bond* waives preference in favour of another, cannot be used in respect of a lease (because leases and any amendments, cessions etc. must be notarially registered).

This is what the waiver of preference by the lease in favour of the bond will look like if created in the mortgage bond:

.... AND ALSO APPEARED the said ABE ABLEMAN (LPC Number), duly authorised thereto by a power of attorney signed at CAPE TOWN on 10 April 2021 and granted to him by

JOHN HAMPSHIRE

Identity number 420624 5012 08 8 and

JOAN HAMPSHIRE

Identity number 461003 0267 08 4

married in community of property to each other,

the lessees under a registered lease for twenty years, executed on 20 October 2013

and held by his said principals by virtue of Notarial Deed of lease K 3456/2003L.

AND THE SAID APPEARER do hereby on behalf of his said principals waive preference of the said registered lease in favour of this mortgage bond, to the intent that-

¹ Regulation 41(7) to the DRA.

- a) the rights of the said lessees under the lease shall not at any time be in a position to compete with the rights of the Mortgagee under this mortgage bond;
 - b) In the event of the said property being sold in execution or in insolvency, the Mortgagee shall have the right to transfer the property to the purchaser thereof free from such lease and to have the whole of the proceeds of such sale applied towards payment of such monies as may then be due and owing to the Mortgagee in respect of capital, interest and all costs owing under such bond.²
- (10)

QUESTION 5

[10]

SCHEDULE OF CONDITIONS

In terms of Section 11(3)(b) of the Sectional Titles Act 95 of 1986

SECTIONAL PLAN	SG No D 438753/2021
SS NUMBER	/2021
NAME OF SCHEME	THE BELVEDERE
DEVELOPER	Quintin Investments CC No CK 1994/123456/23
ADDRESS OF DEVELOPER	22 Belvedere Street, Oranjezicht, Cape Town PO Box 583, Cape Town, 8001
NUMBER OF TITLE DEED	Deed of Transfer No T 5531/1995
DIAGRAM DEED	Deed of Transfer T 9876/1948
DIAGRAM	Diagram No 2112/1948
NAME OF LOCAL AUTHORITY	CAPE TOWN MUNICIPALITY

I, the undersigned,

ABE ABLEMAN
(LPCM No 12345),
Conveyancer practising at Cape Town

hereby certify that the following servitudes, real rights and other registrable conditions of title burden or benefit the land on which the sectional title scheme THE BELVEDERE is situated, which land is described as

ERF 543 MOUNTAINSIDE
In the City of Cape Town, Cape Division, Province Western Cape
MEASURING 3 000 (THREE THOUSAND) square metres
Held by Deed of Transfer T 5531/1995:

² See Jones (4th ed) p 451 for further example of wording of waiver of a right in a bond.

- A. The following conditions contained in Deed of Transfer T 5531/1995:
1. The said Erf 543 Mountainside is entitled to a servitude right of way 10 (TEN) metres wide over Erf 542 Mountainside, measuring 1 000 square metres, held by Deed of Transfer No. T 9876//1948, along and parallel to the entire length of the northern boundary of the said Erf 542 Mountainside, marked AB on Diagram No. 2112/1948 thereof annexed to the said Deed of Transfer No. T 9876/1948, as will more fully appear from Notarial Deed of Servitude No. K 432/1952.
 2. Such further conditions as are mentioned in the aforesaid Deed of Transfer T 9876/1948.
- B. The following condition imposed by the Developer in terms of Section 11(2) of the Sectional Titles Act, read with Section 25 thereof:
3. The Developer hereby reserves to itself and its successors in title or assigns, the right from time to time within a period of 10 (TEN) years from opening of the Sectional Title Register to erect and complete, for its own account, such further building or buildings and/or vertical and/or horizontal extensions of existing building or buildings, as are indicated on the plan and other documents, lodged simultaneously with the application for opening of the sectional title register, in compliance with the provisions of Section 25(2) of the Sectional Titles Act,
as will more fully appear from Certificate of Registered Real Right about to be registered.
- C. No further conditions have been imposed by the Local authority or by the Developer in connection with the land or the scheme.

SIGNED AT CAPE TOWN ON 20 April 2021

QUESTION 6

[15]

- 6.1 Application in terms of Regulation 68(1) ORA for issue of a copy of the lost bond. In terms of Regulation 68(14) the Sheriff is authorised to apply.

Prepared by me
CONVEYANCER
ABE ABLEMAN
(LPCM NO 34567)

**APPLICATION AND AFFIDAVIT IN TERMS OF REGULATION 68(1) AND 68(14) OF
THE DEEDS REGISTRIES ACT 47 OF 1937**

I, the undersigned

SNICKY SNOOK, in my capacity as the Sheriff of High Court Western Cape Division, duly authorised thereto by virtue of a warrant of execution issued by the Registrar of the Court at Cape Town on 12 February 2021 in case number 1256/2019, and in accordance with Regulation 68(14) of the Deeds Registries Act

Do hereby make oath and state as follows:

WHEREAS-

1. SECURE INVESTMENTS (PROPRIETARY) LIMITED No. 2000/123456/07 was the Plaintiff and JAN SNYMAN, Identity number 801010 5001 08 2, unmarried was the Defendant in Case number 1256/2019 in the High Court, Western Cape Division;
2. The rights of the Defendant under Mortgage Bond B 888/2015, passed in his favour by Syringa Investments CC No. CK 1986/123456/23 for the sum of R925 000 (NINE HUNDRED AND TWENTY-FIVE THOUSAND RAND), was attached by virtue of a warrant of execution issued by the Registrar of the Court at Cape Town in the said matter on 12 February 2021 and sold by public auction on 23 March 2021 to the said SECURE INVESTMENTS (PROPRIETARY) LIMITED No. 2000/123456/07;
3. In order to give effect to the sale it is required that I cede the Defendant's right title and interest under the said Mortgage Bond B 888/2015 to the said purchaser, and for this purpose it is required that the original mortgage bond be produced to the Registrar of Deeds together with the Cession;
4. However, despite enquiries made by me and despite diligent search the said Mortgage bond could not be found amongst the papers and other effects of the Defendant or elsewhere, and the directors of the Mortgagor under the bond confirmed in writing that the Mortgagor is not in possession of the said bond, nor do they know where it can be found;
5. The Defendant himself has disappeared and cannot be traced in order to be questioned as regards the mortgage bond's whereabouts;
6. I have no knowledge of whether the mortgage bond is lost or destroyed or otherwise misplaced, but I do confirm that to the best of my knowledge and belief and after enquiries has been made, that the mortgage bond is not pledged to anyone nor is it being held as security by any person;

NOW THEREFORE

I apply to the Registrar of Deeds at Cape Town for the issue to me, in accordance with the provisions of Regulation 68(1) read with Regulation 68(14) for the issue of a certified copy of Mortgage Bond B 888/2015 in lieu of the original thereof.

Signed at CAPE TOWN on 20 April 2021

Sheriff of the High Court

Signed and sworn to before me at Cape Town on _____ /2021, and the deponent acknowledges that he/she knows and understands the content of this affidavit.

Commissioner of Oaths
(Particulars of commissioner of oaths)

6.2

Prepared by me

CONVEYANCER
ABE ABLEMAN
(LPCM NO 34567)

CESSION OF MORTGAGE BOND

I, the undersigned

SNICKY SNOOK, in my capacity as the Sheriff of High Court Western Cape Division,

duly authorised thereto by virtue of a warrant of execution issued by the Registrar of the Court at Cape Town on 12 February 2021 in Case No. 1256/2019 wherein SECURE INVESTMENTS {PROPRIETARY) LIMITED No. 2000/123456/07 was the Plaintiff and JAN SNYMAN, Identity number 801010 5001 08 2, unmarried was the Defendant,

declare as follows:

WHEREAS the Defendant is the legal holder of the undermentioned mortgage bond, namely

MORTGAGE BOND NUMBER	B 888/2015
PASSED BY	SYRINGA INVESTMENTS CC NO. CK 1986/123456/2
IN FAVOUR OF	JAN SNYMAN Identity number 801010 5001 08 2 Unmarried
FOR THE SUM OF	R925 000 (NINE HUNDRED AND TWENTY-FIVE THOUSAND RAND)

AND WHEREAS the rights of the Defendant under the said mortgage bond passed in his favour was attached by virtue of a warrant of execution issued by the Registrar of the High Court, Western Cape Division on 12 February 2021 and sold by public auction on 23 March 2021 to the hereinafter mentioned cessionary, for the sum of R810 000.

NOW THEREFORE I HEREBY CEDE, ASSIGN AND TRANSFER all the right, title and interest of the said Defendant, Jan Snyman, in and to the said mortgage bond, to

SECURE INVESTMENTS (PROPRIETARY) LIMITED
No. 2000/123456/07
For the value received

SIGNED AT CAPE TOWN ON 20 APRIL 2021

SHERIFF OF THE HIGH COURT

AS WITNESSES

1. _____

2. _____

QUESTION 7 _____ **[10]**

Extract from the Minutes of a General Meeting of the Shareholders of ASMARA INVESTMENTS (PROPRIETARY) LIMITED held at Pietermaritzburg on the 20th February 2021.

All shareholders of the Company, namely JOHN LAST, EDITH LAST and EL VIS PRESLEY being present, it was unanimously resolved that:-

1. The sale by the Company to UNDA NAIDOO of
Lot 22 Winterskloof, situate in the Hilton Transitional Local Council Area, Administrative District of Natal, Province of Kwa-Zulu-Natal, in extent THREE THOUSAND (3000) square metres
for the sum of R300 000,00
and it is hereby ratified and confirmed
2. that the Directors of the Company are hereby authorised to take all such steps as may be necessary to transfer the aforesaid property into the name of the Purchaser.

CERTIFIED A TRUE EXTRACT

JOHN LAST - CHAIRMAN OF MEETING

Extract from the Minutes of a Meeting of the Directors of ASMARA INVESTMENTS (PROPRIETARY) LIMITED held at Pietermaritzburg on the 20th February 2021.

All the Directors being present, it was unanimously resolved that:-

1. The Company having sold to LINDA NAIDOO for R300 000,00 the Company's immovable property described as

Lot 22 Winterskloof, situate in the Hilton Transitional Local Council Area, Administrative District of Natal, Province of Kwa-Zulu-Natal, in extent THREE THOUSAND (3000) square metres

that transfer now be given to the Purchaser.

2. That JOHN LAST, in his capacity as a Director of the Company be and he is hereby authorised and directed to sign on behalf of the Company the Power of Attorney to Transfer and any other documents necessary to enable transfer of the said property to be passed to the Purchaser.

CERTIFIED A TRUE EXTRACT

JOHN LAST - DIRECTOR CHAIRMAN OF MEETING

QUESTION 8

[8]

- 8.1 And the Appearer declared that whereas in the matter in the Magistrate's Court of South Africa, Cape Town, case number 1234/2018, in which Best Bank limited was the plaintiff and Jack Russell, Identity number 620422 501508 4, was the defendant, the hereinafter mentioned property, being registered in the name of the said Jack Russell, was by virtue of a warrant of execution issued by the Clerk of the said Magistrate's Court on 2 January 2020, attached by the Sheriff and duly sold by public auction on 15 February 2021 to the undermentioned transferee, Snooty Snakeface, now therefore... (6)

- 8.2.1 The sheriff must (as stipulated in Regulation 51(2) certify in writing that he was unable to obtain possession of the title deed. The Registrar will then permit transfer to proceed without the need for lodging the title deed. However, in the unlikely event of the deeds registry's copy of the deed also being lost, then the Sheriff will have to apply for a Certificate of Registered Title in terms of Section 38 of the Deeds Registries Act. (2)

QUESTION 9

[19]

- 9.1 ERF100 IRINGA
In the City of Cape Town, Cape Division, Province Western Cape
MEASURING 500 (FIVE HUNDRED) square metres

As will more fully appear from general plan SG No. 5601/2018 and held by Certificate of Registered Title T8000/2017.

(4)

- 9.2 First transferred and still held by Deed of Transfer T 8269/2018 with general plan SG No. 5601/2018 relating thereto. (3)
- 9.3 First transferred by Deed of Transfer T 8269/2018 with general plan SG No. 5601/2018 relating thereto and held by Deed of Transfer T /2020. (4)
- 9.4 As will more fully appear from diagram SG 5000/2020 annexed hereto and held by Deed of Transfer T 120500/2020. (4)
- 9.5 First transferred by Deed of Transfer T 8269/2018 with diagram SG No relating thereto and held by Deed of Transfer T 120500/2020 - See Registrar Conference 2016. (4)

Note: The numbers of the General Plan and diagram in the model answers are contained in the questions and answers of candidates must be the same as the model answers.

QUESTION 10

[20]

Prepared by me

CONVEYANCER
FULL NAMES
LPC NUMBER

POWER OF ATTORNEY AND AGREEMENT TO PARTITION LAND

We, the undersigned,

1. ALBERT JONES
Identity Number 600705 6161 08 4
and
MARINA JONES
Identity Number 650111 4215 08 5
Married in community of property to each other

and

2. BRENDAN JONES
Identity Number 600705 7259 08 6
Married out of community of property

ERF 986 DURBAN

Registration Division FU, Province of Kwazulu-Natal, in extent 2 500 (two thousand five hundred) square metres

Held in equal shares by us, the said ALBERT JONES and BRENDAN JONES under Deed of Transfer No. T3003/2001.

Declare that we hereby agree to partition the aforementioned land and that we hereby award to each other the land as described below, subject to or with the benefit of, as the case may be, the new conditions described below, and we do hereby appoint CHRISTOPHER PHILLIPS with power of substitution on our behalf in accordance with law to transfer ownership of the land so awarded to each of us.

1. Awarded to:

ALBERT JONES
Identity Number 600705 6161 08 4
and
MARINA JONES
Identity Number 650111 4215 08 5
Married in community of property to each other

PORTION 1 OF ERF 986 DURBAN
Registration Division FU, Province of Kwazulu Natal, in extent 1 750
(One thousand Seven hundred and Fifty) square metres

As represented on diagram SG No. 700/2002.

The aforesaid property is to be transferred with the benefit of enforcing the following condition against the Remainder of Erf 986 Durban:

“No building or structure of any kind rising higher than 8 (eight) metres above the level of the ground on which it stands shall be erected on the land, and no tree growing upon the land shall be allowed to reach a height of more than 8 (eight) metres above ground level, except with the written consent of the owner from time to time of Portion 1 of Erf 986 Durban.”

2. Awarded to:

BRENDAN JONES
Identity Number 600705 7259 08 6
Married out of community of property

REMAINDER OF ERF 986 DURBAN
Registration Division FU, Province of Kwazulu-Natal, in extent 750 (seven hundred and fifty) square metres

And we declare that no consideration has been given or received by any of us or by or on our behalf in respect of this partition and mutual transfer.

SIGNED at DURBAN on

1. _____

ALBERT JONES

2. _____

MARINA JONES

BRENDAN JONES

QUESTION 11

[23]

11.1

Prepared by me
CONVEYANCER
FULL NAMES
LPC NO.....

POWER OF ATTORNEY

I,

JOHN MOKOENA

in my capacity as executor in the estate of the late

DAVID MOKOENA

duly appointed thereto by letters of executorship 538/2019 issued by the Master of the High Court at Pretoria

hereby appoint Bernard Jones (LPC Number.....) and/or John Brown (LPC Number) to be my attorney and agent and to appear before the Registrar of Deeds at Pretoria and to declare that

Whereas the late David Mokoena, who died on 20 December 2019 and his surviving spouse Salumina Mokoena executed a joint will at Dawnville on 20 October 2016 in which they massed their joint estates and bequeathed their estate to their children, subject to a life usufruct in favour of the surviving spouse.

And whereas the surviving spouse adiated.

And whereas the deceased and his surviving spouse were survived by their three children, the hereinafter mentioned transferees

Now therefor I authorise my said attorney and agent to transfer to

1. John Mokoena Identity number married out of community of property
2. Jane Mokoena Identity number unmarried
3. Elizabeth Mokoena Identity number unmarried

the following property, namely:

Erf 52 in the township Dawnville, Registration Division I.Q., Gauteng
In extent 1000 (one thousand) square metres

Held by Deed of Transfer T.....

Subject to a life usufruct in favour of

Salumina Mokoena Identity number 680605 0545 08 3 Widow

SIGNED at _____ on _____

AS WITNESSES

1. _____
2. _____

NOTE: The object of this question is to test the ability to draft a proper causa from the facts. Also note that the candidate had to provide his/her own further information regarding the transferees as it was not provided in the question. No general clause was required in the power of attorney as per the question. (18)

11.2 The preparer accepts responsibility that the person signing the power of attorney has been appointed as executor and is acting within the powers granted to him and that any security required, has been furnished to the Master. (3)

11.3 ½ share is subject to transfer duty and a receipt or exemption should be lodged. This will also show whether there is VAT payable or not. The exemption in terms of the Transfer Duty Act 1940 must be dealt with in terms of Chief Registrar's Circular 14/2000. (2)

QUESTION 12 **[8]**

Notwithstanding anything to the contrary herein contained the Seller shall be entitled at any time prior 15th March 2021 in the hereinafter detailed circumstances to cancel this agreement with both parties reciprocally acknowledging that there shall be no claim the one against the other arising from such cancellation:

1. If the Seller receives a written offer to purchase the property forming the subject matter of this agreement and regards the terms of such offer as being acceptable he shall be entitled to call upon the Purchaser to accept substitution of the terms of such offer for the terms of the agreement of sale and upon such acceptance the agreement of sale shall be deemed to be amended accordingly.
2. The Purchaser fails or declines to accept such substituted terms within 72

(seventy-two) hours of being so called upon the Seller shall be entitled to forthwith cancel this agreement.

Note: there may be various other answers that may be accepted. Examiners must use their discretion when marking the answers.

QUESTION 13

[6]

In terms of Section 35 of the Insolvency Act, 24 of 1936, the trustee of his insolvent estate may enforce or abandon the contract. The seller may call upon the trustee by notice in writing to elect whether he will enforce or abandon the contract, and if the trustee has after expiration of six weeks as from receipt of the notice, failed to make his election as aforesaid, and inform the other party thereof, the other party may apply to the court for cancellation of the contract and for an order directing the trustee to restore to the seller the possession of immovable property under the control of the trustee.

QUESTION 14

[6]

14.1 If a transaction is VAT exempt, it falls outside the VAT net/altogether. Accordingly transfer duty (if applicable) is payable on the transaction. The position is therefore the same as if the seller was never registered for VAT. If a transaction is zero-rated, it falls within the VAT net and all provisions relating to VAT apply, including the provision that the purchaser can still claim input tax credits in respect of the property concerned. The rate is only 0% instead of the normal rate (currently 15%). (4)

- 14.2
- a) the seller and purchaser must be VAT vendors
 - b) the enterprise sold must be a going concern
 - c) the parties must specifically agree in writing that the enterprise is being sold as a going concern
 - d) the property must consist of an enterprise or part of an enterprise which is capable of separate operation and,
 - f) the assets necessary for carrying on the income earning activity must also be disposed of to the purchaser. (2)

TOTAL: [200]