

CONVEYANCING
PART 2
9 SEPTEMBER 2015
MEMORANDUM

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The content of the memorandum may not reflect the most current developments. 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.

QUESTION 1

1.1 The executor will have to advise the heirs that transfer cannot be affected and the property will have to be sold or transferred to a legal entity or persona created for purpose of taking transfer thereof.

1.2.1 See section 6A of the Act which excludes:

- 1) A right of way, aquaduct, pipeline or conducting of electricity with a width not exceeding 15 metres and a servitude which is supplementary to a servitude referred to and which servitude area does not exceed 225 square metres which adjoins the area of last mentioned servitude;
- 2) 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.

- 1.2.2 If a right of habitation is granted over agricultural land for a period of 10 years or for the life of the holder of such right, the consent of the Minister must be obtained and lodged. A diagram will also be a prerequisite.

QUESTION 2

1. Yes - section 15(2)(a)
2. Yes - section 15(2)(b) (Separate consent needed)
3. No - section 15(6)

QUESTION 3

- 3.1. Section 20: 90 days from date of contract, if land is registrable or 90 days from the date on which the land becomes registerable, or 90 days from the date upon which this land is registered in the name of the purchaser in terms of a preceding contract.
- 3.2. If seller fails, purchaser has option for period of 14 days after expiry of 90-day period to cancel this contract or apply himself for record.
- 3.3. Application - Form A plus affidavit, Title deed.
- 3.4. No - consent not required - it does not affect the security of the bondholder.

QUESTION 4

1. An architect or a quantity surveyor has issued a certificate that the housing development scheme has been erected substantially in accordance with approved building plans and town-planning scheme and applicable local authority by-laws and is sufficiently completed for utilisation of the housing interest concerned.
2. A copy of the certificate and of the contract is furnished to the purchaser.
3. If housing interest includes a right of occupation, a practitioner has issued a certificate that the title deed of the land has been endorsed and a copy of that certificate has been furnished to the purchaser.

(Section 6 of the Housing Development Scheme for Retired Persons Act, 65/1988)

QUESTION 5

Lease must be notarially executed and registered in terms of section 77 of DRA or if not registered, the creditor or successor of the lessor must have known about the existence of the lease before entering into the transaction concerned.

QUESTION 6

6.1 The transfer duty implications are dependent on the wording of the donation in the ANC. Transfer duty is payable within 6 months of date of ANC if the specific property has been donated. A caveat will be registered against the specific property described and before the owner may deal with the property, he / she will first have to satisfy the Registrar of Deeds that transfer duty was/is being paid. If transfer duty not paid within 6 months, penalties become payable. If the donation is coached in general terms, i.e. "I donate immovable property not less than R..... to my wife, same to be determined and transferred to her during our marriage" then no acquisition of property has taken place and no transfer duty is payable.

6.2 No transfer duty is payable in terms of a section 24(bis)(2) endorsement, unless the shareholding of the partners between the dates of registration of the property into the name of the partnership and the dissolution of the partnership has changed, then transfer duty will be payable.

6.3 Transfer duty is calculated on the fair market value and should be calculated on the full amount of R 9 000 000.00 and then halved

Calculation of transfer duty

0 – 750 000 – exempted

750 000 – 1 250 000.00 – 3%

1 250 000.00 – 1 750 000.00 – 6%

1 750 000.00 – 2 250 000.00 – 8%

Over 2 250 000.00 – 11%

3 % on 500 000 – R 15 000.00

6% on 500 000 – R 30 000.00

8 % on 500 000 – R 40 000.00

11% on 6 750 000.00 – R 742 500.00

Transfer duty payable R 827 500.00 Divided by 2 = R413 750.00

- 6.4 Calculation of transfer duty
- 0 – 750 000 – exempted
 - 750 000 – 1250 000.00 – 3%
 - 1250 000.00 – 1750 000.00 – 6%
 - 1750 000.00 – 2250 000.00 – 8%
 - Over 2250 000.00 – 11%
-
- 3 % on 500 000 – R 15 000.00
 - 6% on 500 000 – R 30 000.00
 - 8 % on 500 000 – R 40 000.00
 - 11% on 750 000.00 – R 82 500.00

Transfer duty payable = R 167 500.00

QUESTION 7

- 7.1 No. S 4(2) of STA provides that consolidation not necessary if notarially tied.
- 7.2 S 4(3): comply with section prior to application for approval of scheme - notice given to tenants of intention to register and apply for sectional title scheme, meeting must be arranged (14 days' notice). Notice to contain sufficient information as may be usually required. The developer must furnish details as contained in section 4 of Sectional Title Act.
- 7.3 Comply with section 10 (1) – see section for details
- 7.4 Can be done, but monies cannot be utilised until compliance with Act: see S25 of Alienation of Land Act
1. Deposited in trust with attorney/estate agent
 2. Developer issues guarantee for repayment as specified in the Act.

QUESTION 8

Prepare 10 separate deeds of sale. Each of the transactions will be excluded from transfer duty.

QUESTION 9

- 9.1. Mary Brown (Formerly Smith)
Identity number 611001 0031 084
married out of community of property
- 9.2. Mary Brown (formerly Smith)
Identity number 611001 0031 084
married in community of property to John Brown, the community of property being excluded by the terms of the Will of the Late Tersia Smith dated 17 February 1985 hereinafter referred to
- 9.3. Mary Smith
Identity number 611001 0031 084
unmarried;
(no need to refer to unrehabilitated insolvent acting with consent-see RCR 6 of 1999)
- 9.4. Mary Brown
Identity number 311003 0831 00 1
married in community of property to John Brown
- 9.5. Brown Investments CC
Registration Number 1993/12345/23
- 9.6. The trustees for the time being of the Estate of the Late John Brown/John Brown Will Trust - Trust No MT.....
(it may depend on whether a name has been assigned to the trust)

QUESTION 10

Despite strict interpretation of section 57, A can be substituted as debtor in terms of section 57 of the DRA. Confirmed in terms of RCR 7 of 1994 and subsequent RCR 19 of 2005 and 7 of 2006.

QUESTION 11

S 40 of Act - written consent of all members and provided CC still able to pay debts, etc.

QUESTION 12

Inserted to provide security not only for the loan, but also for legal cost, arrear rates etc., in event of mortgagor's default.

QUESTION 13

Any 5 mentioned in Regulation 44A of DRA and 16C of the Sectional Titles Act

QUESTION 14

**CONVEYANCER'S CERTIFICATE
UNDER SECTION 15B (3) OF THE SECTIONAL TITLES ACT, 1986**

I, the undersigned, **INSERT NAME**, Conveyancer of Durban, in the Province of KwaZulu-Natal, do hereby certify that as at the date of registration:

1. **FIVE NINETY RIDGE ROAD DURBAN (SHARE BLOCK) (PROPRIETARY) LIMITED, Registration number 1973/001541/07**

(the Transferor) is the registered owner of

1.1 A **Unit** consisting of-

- (a) **Section No. 20** as shown and more fully described on Sectional Plan No. SS 417/2011 in the scheme known as **BREAKERS**, in respect of the land and building or buildings situated at Durban, eThekweni Municipality area, of which section the floor area, according to the said Sectional Plan is 95 (Ninety Five) 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 Certificate of Registered Sectional Title No. ST 41736/2011

2. **BOB HEWITT**
Identity Number 660614 0090 08 3
Unmarried

is the Transferee of the said Unit

3. According to a sworn declaration furnished by the Transferor Company the levies contemplated in Section 13 of the Share Blocks Control Act of 1980 to be paid to the Transferor by the Transferee have been paid or payment thereof has been secured to the satisfaction of the company.
4. The documents referred to in Items 8(1) and 8(2) of schedule 1 of the Share Blocks Control Act aforesaid have been delivered according to the provisions of the said Items 8(1) and 8(2).
5. No real right of extension of the Scheme as contemplated in Section 25 of Act No. 95 of 1986 is registered in favour of the Company.
6. The Transferor herein is not a Developer, and a Section 10 Affidavit is not necessary.
7. Provision has been made for the separate rating of the said unit and a clearance certificate by the local authority is lodged herein.

SIGNED at **DURBAN** on this _____ day of _____.

CONVEYANCER
INSERT NAME