

**CONVEYANCING
PART 1****5 SEPTEMBER
2018****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 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**POWER OF ATTORNEY**

If any two persons have by virtue of their mutual will massed the whole or any specific portion of their joint estate and disposed of the massed estate or of any portion thereof after the death of the survivor or survivors or the happening of any other event after the death of the first-dying, conferring upon the survivor or survivors any limited interest in respect of any property in the massed estate, then upon the death of the first-dying, adiation by the survivor or survivors has the effect of conferring upon the persons in whose favour such disposition was made, such rights in respect of any property forming part of the share of the survivor or survivors of the massed estate as they would by law have possessed under the will if that property had belonged to the first-dying.

Accordingly, Rory Bryan Gibson's adiation of the will causes him to waive his right to the one-half share of the joint estate in exchange for the usufruct over the property.

The property will therefore have to be transferred to their daughter as the heir in terms of the joint will by means of a formal deed of transfer.

QUESTION 1.2

Usufruct is a personal servitude and in terms of section 65 of the Deeds Registries Act personal servitudes are created by means of a notarial deed. There are, however, exceptions whereby a personal servitude can be created directly in the deed of transfer.

A personal servitude may be reserved by condition in a deed of transfer of land if the reservation is in favour of:

- i. the transferor; or
- ii. the transferor and his or her spouse or the survivor of them if they are married in community of property; or
- iii. the surviving spouse if transfer is passed from the joint estate of spouses who were married in community of property.

As this usufruct is in favour of the surviving spouse, it can be created directly in the deed of transfer by reserving it as a condition in the power attorney and be carried forward to the deed of transfer.

I will therefore reserve the usufruct in the power of attorney to register same.

QUESTION 1.3

Prepared by me

CONVEYANCER
FULL NAMES AND SURNAMES

POWER OF ATTORNEY TO PASS TRANSFER

We, the undersigned,

LAW SOCIETY OF SOUTH AFRICA

LEGAL EDUCATION AND DEVELOPMENT [L.E.A.D]™

THERESA MAY ANNE GIBSON and THOMAS BRENDAN GIBSON in our capacity as co-executors in the estate of the late MARCELLA CELINE GIBSON, Estate number 3348/2015 and duly appointed by virtue of Letters of Executorship issued by the Master of the High Court at Pietermaritzburg on 10 May 2008¹.

Do hereby nominate, authorise and appoint Allen Stanley West, with power of substitution, to be our true and lawful agent to appear before the Registrar of Deeds at Pietermaritzburg and then and there as our act and deed, to declare that whereas the late MARCELLA CELINE GIBSON died on 14 April 2015;

And whereas in terms of the joint will dated 17 February 2011 of the late MARCELLA CELINE GIBSON and her surviving spouse RORY BRYAN GIBSON, to whom she was married in community of property, their respective estates were massed and bequeathed to their daughter, THERESA MAY ANNE GIBSON subject to a condition relating to the exclusion of community of property, and subject to a life usufruct in favour of the survivor of the testator, as is more fully set out hereinafter;

And whereas the said RORY BRYAN GIBSON has adiated under the said joint will;

NOW THEREFORE and then and there as our act and deed, to pass transfer to

THERESA MAY ANNE GIBSON
 Identity Number 910607 0062 084
 Unmarried²

Of the following property –

Erf 983, Hilton Township
 Registration Division J.R., Gauteng Province
 Measuring 2000 (two thousand) square metres
 Held by Deed of Transfer T25790/2010

Subject to the following conditions contained in the said will –

¹ One of the exceptions of section 21 where the executor acts alone, because of massing and the survivor adiated the will.

² Should they have said she is married in community of property, should have included “with the exclusion of the community of property in respect of the undermentioned property as a result of the stipulations contained in the joint will of the late And dated 17 February 2018.

- i. “Any benefit accruing to any beneficiary of this Will and any Codicil hereto shall be absolutely excluded from any community of property and any community of profit and loss which may exist between him or her and any spouse and the fruits thereof shall not be party of any accrual.”
- ii. Subject to the life usufruct in favour of

RORY BRYAN GIBSON

Identity number

Married in community of property to AMELIA GIBSON³.

Executed at

As witnesses:

1. _____

2. _____



_____ TMA GIBSON

_____ TB GIBSON

QUESTION 1.4

The property belonged to both spouses married in community of property in one-half shares. Accordingly, one-half share from the deceased and one-half share from the surviving spouse will have to be transferred to the transferee in terms of the will.

Transfer duty will be paid on one-half share of the property to be transferred to the transferee from the surviving spouse. Transfer duty will be paid on the value of the property minus the value of the usufruct.

The other one-half share of the property, which belonged to the deceased, will be exempted from transfer duty in terms of section 9(1)(e) of the Transfer Duty Act. According to this section “*property of the deceased that has been acquired by means of succession ab intestate or in accordance with a will or as a result of a redistribution of the assets of a deceased estate*” will be exempted from transfer duty to an heir or legatee.

³ The usufruct will only vest in RB Gibson because of the exclusion of the community of property condition contained in the joint will.

QUESTION 1.5

I will advise the client that the bond will have to be cancelled.

The entire property is bequeathed to the daughter, and Rory will therefore no longer be the owner of the property.

In terms of section 57 of the Deeds Registries Act a mortgagor may be substituted if the owner of land burdened by a registered bond, transfers the whole of the land to someone. However, this section further provides certain circumstances when the mortgagor may not be substituted, and they are:

- i. When only a portion of the property is transferred;
- ii. Where the transferor of the mortgaged property is effected by endorsement, for example, if a personal servitude is reserved by the transferor in favour of himself;
- iii. Where the transferor is a trustee in an insolvent estate, an executor who administers an estate; a liquidator of a company or close corporation and a liquidator/trustee appointed in terms of the Agricultural Credit Act.

Because of the fact that the transferor has reserved a personal servitude of usufruct over the property in his favour, substitution of debtors in terms of Section 57 of the Act will therefore not be allowed.

The only option is therefore to cancel the bond and to obtain a new bond over another immovable property should he wish to do so.

QUESTION 1.6

Documents to lodge for transfer:

- i. Deed of transfer;
- ii. Power of attorney;
- iii. Title deed;
- iv. Transfer duty certificate;
- v. Rates clearance certificate;
- vi. Certified copy of the will, certified by the Master as a true copy and endorsed that it was accepted by him;

- vii. Section 42(1) certificate by conveyancer;
- viii. Proof of adiation;
- ix. Proof of marriage in community of property (if necessary);
- x. Bond for cancellation and bond.

QUESTION 2.1

FORM O

Prepared by me

CONVEYANCER

FULL NAMES AND SURNAME

(leave ½ page open)

CERTIFICATE OF CONSOLIDATED TITLE

Whereas

JOHN BROWN

Identity number 590130 5054 081 and

RACHEL BROWN

Identity number 590204 0062 084

Married in community of property to each other

have applied for the issue to them of a Certificate of Consolidated Title under the provisions of Section 40 of the Deeds Registries Act No. 47 of 1937,

AND WHEREAS they are the registered owners of

1. Remainder of Erf 100, Warrenton Township
Registration Division J.R., Gauteng Province
Held under Deed of Transfer No. T1234/1993; and
2. Portion 1 of Erf 100, Warrenton Township
Registration Division J.R., Gauteng Province

Held under Deed of Transfer No. T5678/1996
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 Pretoria, do hereby certify that the said

JOHN BROWN

Identity number 590130 5054 081 and

RACHEL BROWN

Identity number 590204 0062 084

Married in community of property to each other

Their heirs, executors, administrators or assigns, are the registered owners of

Erf 200, Warrenton Township

Registration Division J.R., Gauteng Province

Measuring 3000 (three thousand) square metres

As will appear from the diagram SG No. 55/2016 annexed hereto.

- A. The former Remainder of Erf 100, Warrenton Township represented by the figure AxyD on the said Diagram SG No 55/2016 is subject to the following conditions:

“A portion measuring approximately 200 square metres has been expropriated by the Municipality for road widening purposes as will more fully appear from the expropriation notice EX84/94.”

- B. The former Portion 1 of Erf 100, Warrenton Township represented by the figure xBCy on the said Diagram SG No. 55/2016 is subject to the following conditions:

“By Notarial Deed K10/1970 the property held hereunder is subject to a servitude of right of way 4 metres wide in favour of Erf 100, Warrenton and which servitude is indicated by the figure rBCp on the said Diagram SG No 55/2016.”

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

And that by virtue of these presents, the said JOHN BROWN AND RACHEL BROWN, their executors, administrators, 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 Pretoria on this ____ day of September 2018.

REGISTRAR OF DEEDS

QUESTION 2.2

FORM WW

PREPARED BY ME

CONVEYANCER

FULL NAMES AND SURNAME

APPLICATION AND CONSENT IN TERMS OF SECTION 40(5)(a) OF THE DEEDS REGISTRIES

ACT NO 47 OF 1937

We, the undersigned

JOHN BROWN

Identity number 590130 5054 081 and

RACHEL BROWN

Identity number 590204 0062 084

Married in community of property to each other

Having applied for the issue of a Certificate of Consolidated Title in respect of –

Erf 200, Warrenton Township

Registration Division J.R., Gauteng Province

Measuring 3000 (three thousand) square metres
Represented on diagram SG No. 55/2016

Comprising the

Remainder of Erf 100, Warrenton Township
Registration Division J.R., Gauteng Province
Measuring 2000 (two thousand) square metres
Mortgaged under Mortgage Bond B171/1993

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 Warrenton on this _____ day of September 2018.

As witnesses:

1. _____

J BROWN

2. _____

R BROWN

And, I the undersigned, BEN AFFLECK, the signing officer of

BEST BANK LIMITED
Registration number 1999/102938/06

Duly authorised thereto by virtue a resolution of the board of 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 Warrenton on this _____ day of September 2018.

As witnesses:

1. _____

B AFFLECK

2. _____

QUESTION 2.3

Documents to be lodged at the deeds registry:

- i. Application for consolidation, signed by the owner of all the joint owners;
- ii. Certificate of consolidated title, prepared in accordance with Form O;
- iii. Consolidation diagram;
- iv. Notification of approval of consolidation by the municipality;
- v. Consent by the municipality to consolidate;
- vi. Certificate of compliance by municipality;

Regarding the mortgage bond

- vii. Application and consent in terms of section 40(5)(a) – prepared in accordance with Form WW;
- viii. Relevant mortgage bond for endorsement.

QUESTION 2.4

Documents not to be lodged:

- i. Copies of the identity documents of both John and Rachel Brown;
- ii. Marriage certificate of John and Rachel Brown;
- iii. Affidavit by John and Rachel Brown re their marital status and solvency.

QUESTION 3

Prepared by me

CONVEYANCER
FULL NAMES AND SURNAME

POWER OF ATTORNEY TO PASS TRANSFER

We, the undersigned,

LAW SOCIETY OF SOUTH AFRICA

LEGAL EDUCATION AND DEVELOPMENT [L.E.A.D]™

Melanie Morkel and George Brown in our capacity as trustees of the
BODY CORPORATE of the HAPPAY DAYS SCHEME

SS No. 163/1998

duly authorised thereto by virtue of a unanimous resolution taken by the body corporate on 20
August 2018⁴

do hereby nominate, constitute and appoint JOE POE with the power of substitution, as our lawful
agent and attorney, to appear before the Registrar of Deeds, Pretoria and then and there declare that
we did on 1 September 2018 sell to

MAGIC VIEW PROPRIETARY LIMITED

Registration Number 1999/123456/07

the following property

Portion 1 of Erf 123, Menlo Park Township,
Registration Division J.R., Gauteng Province
Measuring 2000 (two thousand) square metres

As will appear from Diagram SG. No. 123/2001⁵

Which property was sold for the amount of R900, 000.00 (nine hundred thousand rand) to the said
transferee.

Signed at Pretoria on this _____ day of September 2018.

As witnesses:

1. _____
M MORDEL

2. _____
G BROWN

⁴ The holder of the real right has consented to the sale of the common property and does not act as transferor
of the Real Right of Extension.

⁵ No title deed reference may be provided.

QUESTION 4

4.1 Subject to a lifelong usufruct in favour of Joanne Bekker, Identity number 630506 0103 087, Unmarried as will more fully appear from Notarial Deed of Cession of usufruct K /....

And further subject to a contingent usufruct in favour of Anna Bekker, Identity number 880405 0103 087, Unmarried.

4.2 After the death of Joanne Bekker, the contingent usufruct must be created notarially in terms of a bilateral notarial deed between Koos Bekker and Anna Bekker.

Simultaneously with the cession, the usufruct in favour of Joanne Bekker must be cancelled in terms of section 68(1) of the Deeds Registries Act, 47 of 1937.

A transfer duty receipt will have to be lodged in respect of the contingent usufruct that will be created.

QUESTION 5

5.1. JO DUBE

Identity Number 550911 5203 080 and

LUCY DUBE

Identity Number 680111 0062 087

Married in community of property to each other

5.2. Documents to be lodged

- i. Application for subdivision;
- ii. Sectional plan of subdivision (in duplicate);
- iii. Existing deed of transfer ST22/2002;
- iv. Existing mortgage bond SB44/2002 in favour of Hel Bank Ltd;
- v. Consent by the mortgagee;
- vi. Certificates of registered sectional title.

5.3. Requirements for valid monogamous Customary Marriage:

- i. Both spouses must be over 18 years of age;

- ii. Both must consent to be married to each other under customary law;
- iii. The marriage must be negotiated and celebrated in accordance with customary law.
- iv. Parties must not be a party to any civil marriage.

5.4. No – section 21 provides that the consent of the trustees of the body corporate must be obtained before submitting the draft sectional plans to the Surveyor-General. At a Registrar's Conference it was therefore resolved that it is not necessary to lodge the consent of the trustees of the body corporate on the registration of the sectional plan of subdivision or consolidation.

QUESTION 6

And the appearer declared that –

WHEREAS in terms of the joint will, dated 10 April 1991, the late MAUD BURNS, who died on 20 April 2012 and her surviving spouse TOBY BURNS, to whom she was married in community of property, massed their estates and the undermentioned property was specifically bequeathed to their daughter, SANDRA SMITH, subject to a usufruct in favour of the surviving spouse;

AND WHEREAS the surviving spouse repudiated the will;

NOW THEREFORE the appearer in his capacity aforesaid hereby cedes and transfers to and on behalf of

SANDRA SMITH

Identity Number 910607 0062 084

Married to RODGER SMITH, which marriage is governed by the laws of England

Her heirs, executors, administrators and assigns in full and free property

½ (One half) share ⁶

ERF 199, HILLCREST TOWNSHIP

REGISTRATION DIVISION J.R., GAUTENG PROVINCE

MEASURING 2000 (Two Thousand) square metres

First transferred and still held by deed of transfer T515/1998 with diagram SG No. 200/1996 relating thereto.

⁶ The whole of the property could also have been transferred to the surviving spouse and Sandra Smith

QUESTION 7

Prepared by me

CONVEYANCER
FULL NAMES AND SURNAME

APPLICATION

I, the undersigned,

PIETER LOUW
Identity Number 910607 4005 023
UNMARRIED

Do hereby apply at the Registrar of Deeds at Pretoria in terms of the provisions 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 in respect of my aggregate share in the undermentioned property, namely –

5/8 (fifth eighth) share in and to –
Erf 123, LYNNWOOD TOWNSHIP
Registration Division J.R., Gauteng Province
Measuring 2000 (two thousand) square metres
Held by the following title deeds in the following shares namely –
¼ (one quarter) share by means of Deed of Transfer T1234/1999;
¼ (one quarter) share by means of Deed of Transfer T345/2004; and
1/8 (one eighth) share by means of Deed of Transfer T1123/2008.

Signed at Pretoria on _____ September 2018.

P LOUW

QUESTION 8.1

Erf 444, Summerton Township
Registration Division J.R., Gauteng Province
Measuring 496 (four hundred ninety six) square metres
Held by Deed of Transfer No. T7739/2013

And subject to the conditions contained therein, and more specifically subject to a lease entered into by JOHN HAMPSHIRE in terms of Notarial Deed No. K319/2014L, of which preference of the said lease is waived, as will more fully appear hereinafter.

QUESTION 8.2.



PREPARED BY ME

CONVEYANCER
FULL NAMES AND SURNAME

POWER OF ATTORNEY

I, the undersigned JOHN HAMPSHIRE
Identity number 590607 40052 081
Unmarried (as lessee)

Do hereby appoint JOE POE with power of substitution to be my lawful attorney and agent in my name, place and stead, to appear before the Registrar of Deeds at Pretoria on my behalf

- i. To waive and renounce my preference in respect of a registered lease over the property know as

Erf 444, Summerton Township
Registration Division J.R., Gauteng Province
Measuring 496 (four hundred ninety six) square metres
Which registered lease is registered in my name under Notarial Deed No. K319/2014L

And which property is registered in the name of:

GRAHAM SMIT
Identity Number 590403 5034 081
Married out of community of property
Under Deed of Transfer No. T7739/2013
TO and in favour of
BEST BANK LIMITED
Registration number 1999/001235/06
(hereinafter referred to as the "Bank")

its order or assigns, with regard to a Mortgage Bond about to be registered by the said
GRAHAM SMIT

Identity Number 590403 5034 081
Married out of community of property

in favour of the Bank over the aforementioned property for the amount of R1, 000, 000.00 (one million rand) together with an additional amount of R200, 000.00 (two hundred thousand rand), to the intent that I shall not at any time be in a position by virtue of such registered lease to compete with the rights of the said Bank as mortgagee and in the event of the said property being sold in execution or in insolvency, or otherwise the said Bank shall have the right to have the property transferred to the purchaser/s, free from such registered lease and to have the whole of the proceeds of such sale applied towards payment of such monies as shall then be due and owing to the said Bank under the bond about to be registered;

- ii. To renounce the benefits of the legal exceptions "*beneficium ordinis seu excussionis et divisionis*" and "*beneficium de doubus vel pluribus reis debendi*" with the force and effect of which exceptions and the renunciation of the benefits I declare to be fully acquainted;
- iii. And for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite, as fully and effectually for all intents and purposes, as I might or could do if personally present and acting herein. I ratify, allow and confirm and promise and agree to ratify, allow and confirm all and whatsoever my said attorney and agent shall lawfully do, or cause to be done, by virtue of these presents.

Signed at Pretoria on _____ September 2018.

As witnesses:

1. _____

_____ J HAMPSHIRE

2. _____

QUESTION 9

- 9.1. First registered and still held by certificate of consolidated title T4352/1996 with diagram S.G. N0. 243/1996 annexed thereto.
- 9.2. First registered by certificate of consolidated title T4352/1996 with diagram S.G. No 243/1996 annexed thereto and held by deed of transfer T81258/1996.
- 9.3. Portion 1 of the Farm Ross 77
Registration Division J.R., Gauteng Province
Measuring 400,0000 (four hundred comma nil nil nil nil) hectares
- As will appear from the annexed diagram S.G. No 42/1997 and held by deed of transfer T6712/1997.

QUESTION 10.1**FORM B**

Prepared by me

CONVEYANCER

FULL NAMES AND SURNAME

APPLICATION UNDER SECTION 11 (1) OF THE SECTIONAL TITLES ACT, 1986

We, the undersigned,

1. Mac Donald, in my capacity as executor in the estate of the late John Peters, estate number 581/2016, duly authorised by virtue of Letter of Executorship issued by the Master of the South Gauteng High Court dated 30 December 2016.

2. Mary Peters

Identity number 680101 0103 087

Unmarried

hereby apply to the Registrar of Deeds for—

1. The opening of a sectional title register in terms of the provisions of section 12 (1) (b) of the Sectional Titles Act, 1986, and the registration of the attached sectional plan in terms of the provisions of section 12 (1) (a) of the aforesaid Act, in respect of the scheme known as SG. No. D362/2016 and held under Title Deed No. T / 918/2008.
2. The issue of certificates of registered sectional title in terms of the provisions of section 12 (1) (d) of the aforesaid Act in respect of the sections shown on the said sectional plan; and
3. The issue of a certificate of real right in terms of the provisions of section 12 (1) (e) of the aforesaid Act in respect of any proviso in terms of section 25 (1); and
4. The issue of a certificate of real right in terms of the provisions of section 12 (1) (f) of the aforesaid Act in respect of right of exclusive use referred to in section 27 (1).

Signed at Pretoria on ____ September 2018.

M DONALD

M PETERS

QUESTION 10.2

Lodgement cover 1: Sectional title plan

- Section title plan S.G No D362/2016 lodged in duplicate

Lodgement cover 2: Application for the opening of the sectional title register

- Application prepared in accordance with Form B

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- Title deed of the land
- 11(3)(b) schedule of conditions
- Certificate by the conveyancer to confirm that Annexure 1 and 2 of the Regulations under the Sectional Title Schemes Management Act 8 of 2011 is applicable
- Consent by the local authority that all requirements have been met in terms of the Spatial Planning and Land Use Management Act 16 of 2013
- Documents in terms of section 25, which include the following:
 - A plan to scale of the existing building or buildings to be erected indicating the following:
 - the part of the common property affected by the extension;
 - the sitting, height and coverage of all buildings;
 - the entrances and exits to the land;
 - the building restriction areas, if any;
 - the parking areas; and
 - the typical elevation treatment of all buildings (section 25(2)(a))
 - A plan to scale showing the manner in which the building or buildings are to be divided into a section or sections and exclusive use areas or the manner in which the common property is to be made subject to the rights of exclusive use areas (section 25(2)(b))
 - A schedule indicating the estimated participation quotas of all the sections in the scheme after such section or sections have been added to the scheme (section 25(2)(c))
 - particulars of any substantial difference between the materials to be used in the construction of the building or buildings and those used in the construction of the existing building or buildings (section 25(2)(d))
 - A certificate by the architect or land surveyor that the plans lodged in terms of section 25(2)(a) and (v) are in accordance with the specifications of the Act (RCR 61 of 2008, amended by RCR 11 of 2011). The names and practice number of the surveyor and/or architect must be disclosed in the certificate (RCR 39 of 2014).

Lodgement cover 3: Mortgage Bond

- Mortgage Bond: Standard Bank
- Consent by the mortgagee to the opening of the sectional title register

Lodgement cover 4: Certificate of real right for exclusive use area

- Prepared in accordance with Form G

Lodgement cover 5: Certificate of real right for the extension of scheme in terms of section 25

- Prepared in accordance with Form H

Lodgement cover 6: Certificates of registered sectional title

- Prepared in accordance with Form C for Sections 1 - 3

(Please note that the covers and contents differ from deeds office to deeds office)

QUESTION 10.3

1. John Peters (now deceased)
Identity number 650807 5082 087
Married out of community of property

2. Mary Peters
Identity number 680101 0103 087
Married out of community of property



LAW SOCIETY
OF SOUTH AFRICA