

# DIE REPUBLIEK VAN SUID-AFRIKA

## TRANSPORTBESORGININGEKSAMEN

### DEEL 2

10 APRIL 2019      2 Uur      14:00-16:15

*Kandidate kry 15 minute om die vraestel deur te lees voor hulle begin skryf. Geen kandidaat mag tydens hierdie tyd in die antwoordboek begin skryf nie. Die eksamen van 2 uur volg dan.*

#### LET ASSEBLIEF OP DIE VOLGENDE:

1. Skryf asseblief die nommer wataen u toegeken is op die omslag van u antwoordboek.
2. Kandidate moet leesbaare netjies skryf. Wat vir die kandidaat (wat aan sy eie handskrif gewoond is) leesbaar mag lyk, is nie altyd leesbaar vir die eksaminatore nie. Daar kan nie van die eksaminatore verwag word om skrif te ontsyfer nie, nog minder is dit regverdig (teenoor ander kandidate) om te verwag dat die eksaminatore dit moet doen. Indien die handskrif van die kandidaat nie duidelik leesbaar vir die eksaminatore is nie, loop die kandidaat gevaar om baie punte te verloor. GEBRUIK SLEGS 'N VUL- OF BALPUNTPEN VIR U ANTWOORDE.
3. Gebruik asseblief net een kant van elke bladsy.
4. Aangesien baie van die vrae op artikels en/of regulasies van die betrokke Wette gebaseer is, sal die antwoorde van selfsprekend of korrek of verkeerd wees.
5. Tensy daar 'n spesiale rede bestaan, word 'n kandidaat nie vir 'n monderling ingeroep as 'n totaal van 50% en meer behaal is nie. Indien 'n kandidaat 'n totaal van tussen 40% en 49% behaal slaag hulle nie die eksamen nie en sal hy/sy 'n mondelinge moet aflê ten einde die eksaminatore te oortuig dat hy/sy wel oor voldoende kennis beskik om die eksamen te slaag. Kandidate wat minder as 40% behaal sal nie kwalifiseer vir 'n mondelinge nie en druip dus hierdie eksamen.

**TOTALE PUNTE: [100]**

# THE REPUBLIC OF SOUTH AFRICA

## CONVEYANCING EXAMINATION

### PART 2

10 APRIL 2019      2 Hours      14:00-16:15

*Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answerbook during this period. The examination of 2 hours then follows.*

#### PLEASE NOTE:

1. Please write the number allocated to you on the cover of your answer book.
2. Candidates must write legibly and neatly. What may appear to a candidate (being accustomed to his own handwriting) to be legible, may **not** be legible to the examiners who cannot be expected to guess what has been written, nor would it be correct or fair (to other candidates) to expect the examiners to do so. If a candidate's handwriting is not clearly legible to the examiners, the candidate runs the risk of losing many marks. **ANSWERS MUST BE WRITTEN ONLY IN INK OR WITH A BALLPOINT PEN.**
3. Please use only one side of each page.
4. As many of the questions are based on sections and/or regulations of the relevant Acts, the answers thereto will obviously be either correct or incorrect.
5. Except if a special reason exists, a candidate will not be required to do an oral if 50% aggregate or more is attained. If a candidate achieves an aggregate of between 40% and 49% he/she will have failed the examination and will be required to do an oral in order to convince the examiners that he/she does have sufficient knowledge to pass the exam. Candidates who attain less than 40% will not qualify for an oral and will have failed this examination.

**TOTAL MARKS: [100]**

**VRAAG 1**

**[12]**

- 1.1 U kliënt, Chris Blyth, het Erf 919 Misty Point verkoop en in die koopkontrak (wat nie deur u opgestel is nie) word die koper beskryf as "David Wright in sy hoedanigheid as trustee vir 'n maatskappy wat gestig staan te word" en daar is geen voorsiening in die ooreenkoms waardeur David Wright persoonlik aanspreeklik sal wees ingeval die maatskappy nie gestig word nie. Die maatskappy is inderdaad gestig drie weke na datum van verkoping.
- 1.1.1 Lys die dokumente met betrekking tot die maatskappy wat u as transport-besorger sou verlang om u self tevrede te stel dat 'n bindende ooreenkoms bestaan ingevolge waarvan u mag voortgaan met registrasie van oordrag. (4)
- 1.1.2 Indien daar in hierdie spesifieke geval regtens spesiale vereistes bestaan met betrekking tot enige van hierdie dokumente, word daar van u verlang om sodanige vereistes te vermeld. (3)
- 1.1.3 Is daar regtens enige spesiale vereiste wat, indien dit nie nagekom word nie, hierdie transaksie ongeldig sal maak? (2)
- 1.2 Indien u die koop-ooreenkoms opgestel het, sou u enige spesiale vereistes ingevoeg het ten einde die verkoper te beskerm en/of ten einde 'n groter buigsaamheid vir die stigting van die maatskappy te verskaf? Indien u antwoord positief is, moet u kortliks aandui wat hierdie vereistes is maar daar word nie van u verlang om enige spesifieke klousule op te stel nie. (3)

**VRAAG 2**

**[2]**

A verkoop sy onroerende eiendom aan B. B het ten volle presteer ingevolge die vervreemdings-akte en die betrokke grond word aan hom oorgedra.

**QUESTION 1**

**[12]**

- 1.1 Your client, Chris Blyth, has sold Erf 919 Misty Point and in the deed of sale (which was not prepared by you) the purchaser is described as "David Wright in his capacity as trustee for a company to be formed" and there is no provision in the contract for David Wright to be personally bound in the event of the company not being formed. The company was in fact formed three weeks after the date of sale.
- 1.1.1 List the documents relating to the company which you, as conveyancer, would call for in order to satisfy yourself that a binding contract exists in terms of which you may procure registration of transfer. (4)
- 1.1.2 If, having regard to this particular matter, there are any special requirements of law in relation to any of those documents, specify those requirements. (3)
- 1.1.3 In the circumstances of this transaction, is there any special requirement of law which, if not met, will invalidate the transaction? (2)
- 1.2 If you had prepared the deed of sale, would you have inserted any special provisions in order to protect the seller and/or in order to provide greater flexibility in the formation of the company? If your answer is in the affirmative, you are not required to draft any specific clauses, but merely to indicate briefly what those provisions would be. (3)

**QUESTION 2**

**[2]**

A sold his immovable property to B. B performed in full in terms of the deed of alienation and the land in question has been transferred to him.

Ses maande na datum van oordrag word gevind dat die vervreemding nie in sekere gevalle voldoen het aan die bepalings van Artikel 2(1) van die Wet op Vervreemding van Grond, Nr. 68 van 1981 nie. Is die oordrag vatbaar om ter syde gestel te word of gekanselleer te word op sterkte hiervan? Motiveer u antwoord.

**VRAAG 3 [3]**

John Smith verkoop sy halwe onverdeelde aandeel in en tot Erf 219 Durban vir die bedrag van R1 100 000,00 aan Joe Bloggs op 15 November 2017. Bereken die hereregte betaalbaar. Verskaf besonderhede van die berekening.

**VRAAG 4 [5]**

'n Eiendom word verkoop deur die eksekuteur in 'n boedel. U verlang 'n Artikel 42(2) endorsement in terme van die Boedelwet Nr. 66 van 1965 van die Meester van die Hooggeregshof voordat u kan voortgaan met die oordrag van die eiendom. Welke dokumente verlang die Meester om by hom ingedien te word voordat hy die endorsement gee?

**VRAAG 5 [8]**

X besit 'n eenheid in 'n deeltitelontwikkeling skema. Die gedeelte wat deel vorm van die eenheid is 'n baie groot woonstel op die grondvloer van die gebou. Dit grens aan 'n groot tuinarea wat aan X gesedeer is as 'n uitsluitlike gebruiksgebied. Die woonstel het te groot geword vir X. Hy is van voorneme om dit te onderverdeel in twee dele. Hy is verder van voorneme om een van hierdie dele te behou en om die ander aan sy vriend Y te verkoop. Insgelyks verlang X nie meer die groot tuinarea nie en wil hy ook hierdie uitsluitlike gebruiksgebied verdeel in twee gedeeltes waarvan hy een sal behou. Hy is van voorneme om die ander gedeelte aan Y oor te dra. Verduidelik kortliks die stappe wat geneem moet word om hierdie voorstel te implimenteer en te verseker dat beide X en Y mettertyd die geregistreerde eienaars van hulle onderskeie kleiner woonstelle en onderskeie kleiner uitsluitlike gebruiksgebiede sal word.

Six months subsequent to the date of transfer, it was found that the alienation did not comply in certain respects with the provisions of Section 2(1) of the Alienation of Land Act, No. 68 of 1981. Is the transfer susceptible to being set aside or cancelled on this ground? Motivate your answer.

**QUESTION 3 [3]**

John Smith sold an undivided half share in and to Erf 219 Durban for the sum of R1 100 000,00 to Joe Bloggs on the 15<sup>th</sup> November 2017. Calculate the Transfer Duty payable. Furnish details of the calculation.

**QUESTION 4 [5]**

A property has been sold by the executor of an estate. You require a Section 42(2) endorsement in terms of the Estates Act No. 66 of 1965 from the Master of the Supreme Court before you can transfer the property. Which documents will the Master request you to lodge with him before he furnishes that endorsement?

**QUESTION 5 [8]**

X owns a unit in a sectional title development scheme. The section forming part of the unit is a very large flat on the ground floor of the building. It has adjoining it a large garden area, which has been ceded to X as an exclusive use area. The flat has become too large for X. He proposes to arrange for it to be subdivided into two sections. He proposes to retain one of these and to sell the other to his friend Y. Similarly, X no longer requires the large garden area and he proposes to similarly divide that exclusive use area into two portions, of which he will retain one. He proposes to vest the other portion in Y. Explain briefly the steps which would have to be taken to implement this proposal and to ensure that both X and Y will in due course end up as the registered owners of their respective smaller flats and of their respective smaller exclusive use areas.

**VRAAG 6 [4]**

A is die geregistreerde eienaar van vier eiendomme kragtens een transportakte. Een van hierdie eiendomme is verkry deur die Staat vir R1 500 000,00. Die Staat verlang om op die mees koste-effektiewe wyse titel van die eiendom te verkry. Kan die oordrag bewerkstellig word sonder die voorbereiding van 'n nuwe Transportakte en indien wel, hoe sal u dit bewerkstellig?

**VRAAG 7 [3]**

'n Volmag om oordrag te passeer van 'n eiendom in die Republiek van Suid Afrika word aan u oorhandig. U moet die oordrag registreer. Die volmag is onderteken voor twee getuies in 'n vreemde land. Is dit in orde? Bespreek kortliks.

**VRAAG 8 [2]**

U kliënt Mortgage Finance (Edms) Bpk gee aan u opdrag om toe te sien tot die registrasie van 'n verband in sy guns deur Nigel Rudman vir die bedrag van R4 100 000,00. Die doel van die lening aan Rudman is om hom te voorsien met kapitaal vir die oprigting van 'n woonhuis op Erf 5331 Sea View. Die kapitaalbedrag van die verband sal uitbetaal word in paaiemente teen lewering van sertifikate van hoe die bouwerk vorder, geteken deur 'n argitek wat die planne opgestel het vir die woning en wat oor die konstruksiewerk sal toesig hou.

U kliënt raadpleeg u om te verseker dat sy belange ten volle beskerm word teen enige eise of regte wat die boukontraakteur mag hê en om sodanige addisionele dokumente op te stel as wat duidelikerwys nodig mag wees om sy sekuriteit te beskerm teen eise van die boukontraakteur. U opdrag is verder om u kliënt te beskerm teen die risiko verbonde aan konstruksie. Welke dokumente, bo en behalwe die verbandakte self (en natuurlik die volmag) sou u opstel?

**QUESTION 6 [4]**

A is the registered owner of four properties by one deed of transfer. One of those properties has been acquired by the State for R1 500 000,00. The State wishes to obtain title to that property by the most cost effective means. Can this be achieved without preparation of a new Deed of Transfer and if so, how will you achieve this?

**QUESTION 7 [3]**

A power of attorney to pass transfer of a property in the Republic of South Africa is handed to you. You are to register the transfer. The power of attorney was signed before two witnesses in a foreign country. Is this in order? Discuss briefly.

**QUESTION 8 [2]**

Your client, Mortgage Finance (Pty) Ltd, instructs you to attend to the registration of a bond in its favour by Nigel Rudman for the sum of R4 100 000,00. The purpose of the loan to Rudman is to provide him with capital for the construction of a dwelling on Erf 5331 Sea View. The capital amount of the bond is to be advanced in instalments against certificates of building progress signed by the architect who drew the plans for the dwelling and who will supervise the construction.

Your client has called upon you to ensure that its interests are fully protected relating to any of the rights of the building contractor and to prepare such additional documents as may be clearly necessary in order to protect its security against claims by the building contractor. You are also instructed to protect your client against risks associated with the building operations. What documents, in addition to the bond itself (and, obviously, the power of attorney), would you prepare?

**VRAAG 9 [3]**

John Smith is van voorneme om Erf 345 Petrusville aan te koop. Hy verlang egter dat die eiendom getranspoteer moet word aan 'n trust wat hy nog moet stig vir die voordeel van sy kinders. Wat moet gedoen word voordat die trustees die koopkontrak en enige ander dokumente wat benodig word vir die registrasie van oordrag mag teken?

**VRAAG 10 [3]**

A is die eienaar van 'n eiendom wat landbougrond is soos gedefinieer in Wet 70 van 1970.

10.1 Mag A 'n gedeelte van sy eiendom aan B verkoop onderhewig aan die opskortende voorwaarde dat die Minister se toestemming tot onderverdeling verkry word? Motiveer u antwoord kortliks.

(1)

10.2 Mag A 'n lewenslange vruggebruik oor sy eiendom registreer ten gunste van sy vader en moeder wat getroud is buite gemeenskap van goed met mekaar? Motiveer u antwoord kortliks.

(2)

**VRAAG 11 [2]**

U word opdrag gegee om 'n eiendom aan B oor te dra. Die titelakte dra 'n endossement ingevolge Artikel 20 van die Wet op Vervreemding van Grond waarin X as die koper aangedui word. Mag u voortgaan om die eiendom in die naam van B te registreer? Motiveer u antwoord kortliks.

**VRAAG 12 [2]**

Mag A homself verbind as borg vir sy lewenslange vriend B sonder sy (A) vrou se toestemming indien hy getroud is in gemeenskap van goed? A is met sy vrou getroud in 1979. Motiveer u antwoord kortliks.

**QUESTION 9 [3]**

John Smith wishes to purchase Erf 345 Petrusville. However, he wishes the property to be transferred to a trust which he is about to form for the benefit of his children. What must be done before the trustees may sign the deed of sale and any other documents required for the purpose of registration of transfer?

**QUESTION 10 [3]**

A is the owner of a property which is agricultural land as defined in Act No. 70 of 1970.

10.1 May A sell a portion of his property to B subject to the suspensive condition that the Minister's consent to subdivision be obtained? Motivate your answer briefly.

(1)

10.2 May A register a life usufruct over his property in favour of his father and mother who are married out of community of property? Motivate your answer briefly.

(2)

**QUESTION 11 [2]**

You are instructed to transfer a property to B. The title deed bears an endorsement in terms of section 20 of the Alienation of Land Act, reflecting X as purchaser. May you proceed to register the property in the name of B? Motivate your answer briefly.

**QUESTION 12 [2]**

May A bind himself as surety for his life long friend B without his (A) wife's consent if he is married in community of property? A married his wife in 1979. Motivate your answer briefly.

**VRAAG 13 [6]**

'n Kliënt is van voorneme om 'n eiendom te verkry vir die gebruik deur hom as 'n woonhuis. Hy verlang u advies met betrekking tot die hereregte- en kapitaalwinstbelastingimplikasies, of dit enige verskil sal maak indien hy in sy persoonlike naam koop of 'n maatskappy sou gebruik as die middel waarmee die eiendom gekoop moet word.

**VRAAG 14 [4]**

Watter tipe bates wat nie deel vorm van 'n bestorwe boedel nie, mag ingebring word om 'n gelykmaking te bewerkstelling in 'n herverdelingsooreenkoms?

**VRAAG 15 [8]**

15.1 A het regsgeldiglik 'n eenheid gekoop in 'n deeltitelskema welke skema nog geregistreer moet word. Bespreek al die moontlikhede wat regtens toegelaat word betreffende die betaling van 'n deposito ten opsigte van die koopprijs van die eenheid in terme van die bepalings van die Wet op Vervreemding van Grond 68 van 1981. (5)

15.2 A het 'n woonhuis gekoop van B ingevolge 'n kontrak soos gedefinieer in die Wet op Vervreemding van Grond. Mag B enige betalings ten opsigte van die koopprijs by ondertekening van die ooreenkoms aanvaar? Bespreek kortliks. (3)

**VRAAG 16 [5]**

Bespreek of Artikel 38 van die Registrasie van Aktes Wet, 47 van 1937 van toepassing sal wees om 'n afskrif van die verbandakte wat vernietig of verlore is te bekom indien die kliënt, sowel as die Registrateur van Aktes se afskrif verlore of vernietig is.

**VRAAG 17 [3]**

Waardaar 'n spelfout in die name van die partye tot 'n huweliksvoorwaardekontrak is, hoe sal

**QUESTION 13 [6]**

A client intends acquiring a property for use by him as a dwelling. He seeks your advise as to whether, from a transfer duty and capital gains tax point of view, it will make any difference whether he acquires the property in his own name or uses a company as the vehicle with which to purchase the property.

**QUESTION 14 [4]**

What form of assets not forming part of a deceased estate may be introduced to effect an equalisation in a redistribution agreement?

**QUESTION 15 [8]**

15.1 A has lawfully bought a unit in a sectional title scheme which scheme is still to be registered. Discuss all the possibilities that are allowed by law regarding the payment of a deposit on account of the purchase price of the unit in terms of the Alienation of Land Act 68 of 1981. (5)

15.2 A has bought a dwelling from B in terms of a contract as defined in the Alienation of Land Act. May B accept any payments on account of the purchase price on signature of the agreement? Discuss briefly. (3)

**QUESTION 16 [5]**

Discuss whether the provisions of Section 38 of the Deeds Registries Act 47 of 1937 can be applied to obtain a copy of a mortgage bond, where the office copy of such bond and the clients copy is lost or destroyed.

**QUESTION 17 [3]**

Where there is an error in the spelling of the names of a party to an antenuptial contract,

daar te werk gegaan word om die fout in registrasie reg te stel indien die kliënt se afskrif van die huweliksvoorwaardekontrak nie gevind kan word nie.

how must one go about affecting the amendment of such error in registration, where the client's copy of the antenuptial contract cannot be found.

**VRAAG 18 [2]**

**QUESTION 18 [2]**

Is dit toelaatbaar dat die regspersoon van 'n deeltitelskema slegs bestaan uit een eienaar? Bespreek.

May the Body Corporate of a sectional title scheme consist of only one owner? Discuss.

**VRAAG 19 [2]**

**QUESTION 19 [2]**

Hoeveel afskrifte van Vorm W moet ingedien word by die Registrateur van Aktes vir die instelling van die regspersoon in terme van Artikel 2 van die Deeltitelskema Bestuurswet No. 8 van 2011?

How many copies of form W must be lodged with the Registrar of Deeds for the formation of the Body Corporate, in terms of Section 2 of the Sectional Title Scheme Management Act 8 of 2011.

**VRAAG 20 [3]**

**QUESTION 20 [3]**

Indien 'n volmag om transport te verleen uitgevoer is in Windhoek (Namibië), watter prosedure moet gevolg word om die volmag te waarmerk, in terme van die reëls van waarmede? Bespreek.

Where a power of attorney to pass transfer of immovable property has been executed in Windhoek (Namibia), how must such power of attorney be authenticated, in terms of the rules of authentication. Discuss.

**VRAAG 21 [7]**

**QUESTION 21 [7]**

(i) ABC (Edms) Bpk se naam is verander na XYZ (Edms) Bpk in 2008. Bespreek hoe u te werk sal gaan om die naamsverandering teen die titelakte aan te teken wat geregistreer is in die naam van ABC (Edms) Bpk en bespreek watter dokumente u sal indien. (2)

(i) ABC (Pty) Ltd has changed its name to XYZ (Pty) Ltd in 2008. Discuss how you would go about affecting the registration of the change of name against the title deed of the land registered in the name of ABC (Pty) Ltd, and discuss also the documents that need to be lodged. (2)

(ii) Indien die naamsverandering van ABC (Edms) Bpk plaasgevind het in 2017, sal u antwoord dieselfde wees as in (i) hierbo? Bespreek. (2)

(ii) Had the name of the ABC (Pty) Ltd been changed in 2017 would your answer in (i) above remain the same? Discuss. (2)

(iii) Indien die eiendom beswaar is, sal dit nodig wees om die verbandakte asook die verbandhouer se toestemming in te dien? Bespreek. (3)

(iii) Had the land in question been mortgaged, would it have been necessary to lodge the bond as well as the bondholder's consent? Discuss. (3)

**VRAAG 22 [4]**

A verkoop sy onroerende eiendomaan B, en daar word gelyktydig 'n verband geregistreer vir die balanskoopprys ten bedrae van R 25 000,00 ten gunste van A. Bespreek of dit nodig sal wees vir A om as 'n kredietverskaffer te registreer, in terme van die Nasionale Krediet Wet, 34 van 2005?

**VRAAG 23 [4]**

Bespreek met verwysing na gesag of die volgende dokumente as 'n ware afskrif gesertifiseer kan word deur 'n Aktebesorger of 'n Notaris:

- (i) Hofbevel; (1)
- (ii) Naasbestaande beëdigde verklaring; (1)
- (iii) Doodsertifikaat; (1)
- (iv) Huweliksertifikaat. (1)

**VRAAG 24 [3]**

ABC (Edms) Bpk is gelikwideer en is die geregistreerde eienaar van 'n Erf in 'n dorpsgebied onderhewig aan 'n geregistreerde verband ten gunste van 'n bank. Die likwidateur van ABC (Edms) Bpk is gemoeid met die oordrag van die Erf. Bespreek of die verband ingedien moet word vir afhandeling.

**QUESTION 22 [4]**

A has sold his immovable property to B and simultaneously a bond for the balance of the purchase price of R 25 000,00 will be registered in favour of A. Discuss whether it would be necessary for A to register as a credit provider in terms of the National Credit Act No. 34 of 2005.

**QUESTION 23 [4]**

Discuss with reference to authority whether the following documents can be certified a true copy of the original by a Conveyancer or Notary.

- (i) Order of court; (1)
- (ii) Affidavit of next of kin; (1)
- (iii) Death certificate; (1)
- (iv) Marriage Certificate. (1)

**QUESTION 24 [3]**

ABC (Pty) Ltd has been liquidated and is the registered owner of an Erf in a township subject to a registered mortgage bond in favour of a bank. The liquidator of ABC (Pty) Ltd is attending to the transfer of the erf. Discuss whether the mortgage bond must be lodged for disposal.

- DIE EINDE -

- THE END -