

**CONVEYANCING PRACTICE
PART 1**

11 SEPTEMBER 2019

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

Leandri Botha
in my capacity as executor in the estate of the late Melinda Augustyn duly
appointed by virtue of Letters of Executorship 421/1997 issued by the
Master of the High Court at Pretoria on 18 June 1997
and

Schalk Augustyn

Identity Number 880102 5080 089

Widower/unmarried

in my personal capacity as surviving spouse of the deceased with whom I was married in community of property

QUESTION 2

- The parties record that the purchaser has the right in terms of this provision to terminate the contract by written notice to that effect and delivered to the Seller.
- The said notice is given within 5(five) days after signature of this agreement by the purchaser.

- And calculated in terms of Section 29(A)(2).
- The said notice shall comply with section 29(A)(3).
 - See the exclusions in the Act when not applicable to the purchaser.
- Amount R250 000.00.

QUESTION 3

There is an attachment noted against the property.

No transfer can take place unless the attachment has been uplifted.

The following information must be obtained from the attachment notice:

- Which sheriff attached the property?
Who are the plaintiff and the respondent?
Which property was attached?
Who is the plaintiff's attorney?

Then establish what amount must be paid to the plaintiff in order to uplift the attachment. If the proceeds of the sale are sufficient, I shall provide the plaintiff with an acceptable guarantee or undertaking to enable the plaintiff to have the attachment uplifted.

Only once the attachment has been uplifted, the transfer can be registered.

QUESTION 4

Personal servitudes

In terms of the last proviso to section 65, negative personal servitudes can be created in the power of attorney. If created in favour of a third party, same must be accepted.

In terms of section 67, positive personal servitudes can be created if in favour of the transferee or the transferor and his spouse who is married in community of property, or the surviving spouse if transfer is affected from a joint estate.

Praedial Servitudes

In terms of section 76(1) praedial servitudes may be created in the power of attorney only if imposed over or in favour of other land belonging to the transferor.

Unregistered praedial servitudes may also be created over or in favour of other land registered in the name of the transferor, provided same is admitted and accepted.

QUESTION 5

- (1) A praedial servitude in perpetuity or for a limited period may be created in a transfer of land only if the servitude is imposed on the land transferred in favour of other land registered in the name of the transferor, or is imposed in favour of the land transferred on other land registered in the name of the transferor; Provided that if-
- (a) the land to be transferred is admitted by the person seeking to pass transfer thereof to be subject to unregistered rights of servitude in favour of land registered in a third person's name; and
 - (b) the person to whom the transfer is to be passed consents in writing to such servitude being embodied in the transfer; and
 - (c) such third person appears either in person or by duly authorized agent before the registrar at the time of execution of the transfer and accepts the servitude in favour of his land,

the servitude may be embodied in such transfer. The appearance of such third person as aforesaid and his acceptance of the servitude shall be recited in the deed of transfer and the title deed of the dominant tenement shall be produced for endorsement thereon of the items of the servitude.

QUESTION 6

Where the minor is below the age of 7, the guardian, either mother or father, must sign the consent to cancellation.

Where the minor is between 7 and 18, the minor can sign the consent assisted by his guardian, i.e. mother or father, alternatively the guardian may sign on his/her own.

Where both the mother and father are deceased, the court must appoint a guardian to sign.

QUESTION 7

- 7.1 And the Appearer has declared that in pursuance of a writ of execution directed to the Sheriff of the district Pretoria, issued on the 2nd January 2011 in execution of a judgment of the High Court of South Africa (North Gauteng Division) case Number 301/2010 in an action wherein XYX (PTY) LTD was the Plaintiff and Jo Brown was the Defendant, the Sheriff has attached the hereafter described property

which is registered in the name of Jo Brown and the property hereafter referred to was sold by public auction on the 3rd April 2011.

- 7.2 Where the executor in an estate of a deceased person transfers land as a result of a transaction concluded by such deceased during his lifetime, this fact should be stated clearly in the causa e.g.

And the Appearer declared that said deceased, Jo Brown, during his lifetime, on the 18th April 2011, had truly and legally sold the property described hereafter.

- 7.3 And the Appearer declared that his principal donated the property hereinafter mentioned on the 15 May 2014.

Note: No acceptance must be referred to

- 7.4 And whereas the Appearer declared that in terms of an agreement entered into on the 4th July 2014, the said Appearer's principal did exchange the below mentioned property for Erf 10 Hatfield township held by the said transferee in terms of Deed of Transfer T10/1990.

Now therefore ...

- 7.5 In the case of a rectification transfer the causa will have to disclose all the fact about how the error occurred, how it is being corrected and why. The causa may read as follows;

Whereas the Appearer's principal on 4th January 2011 bought Erf 14 Hatfield township, measuring And erroneously received transfer of Erf 15 Hatfield Township, measuring in terms of Deed of Transfer Number T11/2012;

AND whereas said Erf 15 was bought by Jo Brown, who erroneously received transfer of said Erf 14 Hatfield Township;

AND whereas the Appearer's principal and the said Jo Brown agreed on the 6th April 2012 to rectify the error in consequence whereof the Appearer's principal contemporaneous herewith receives transfer of the said Erf 14 Hatfield Township.

QUESTION 8

1. A right of way, aqueduct, pipe line or conducting of electricity within a width not exceeding 15 metres;
2. A servitude which is supplementary to a servitude referred to in 1, and which has a servitude area not exceeding 225 square metres which adjoins the area of the last mentioned servitude

3. A usufruct over the whole of agricultural land in favour of one person, or in favour of such person and his/her spouse or the survivor of them if they are married in community of property.
4. A *habitatio* for less than 10 years.

QUESTION 9

- 9.1 This is an exception as stipulated in section 21 of the Deeds Registries Act where the surviving spouse need not be joined in his/her personal capacity with the executor of the deceased's estate. "*Sebusizwe Nkosi in my capacity as the Executor in the estate of Trevor Khumalo Estate number 654/2018 acting in terms of Letters of Executorship issued by the Master of the High Court at Cape Town on 15 March 2018*"
- 9.2
- (a) Draft Deed of Transfer
 - (b) Holding deed
 - (c) Transfer duty receipt
 - (d) Rates clearance certificate
 - (e) *Power of Attorney endorsed in terms of section 42(2), augmented to refer to section 34(2), alternatively the causa must allude to section 34(2).*

QUESTION 10

10.1 A consent of cancellation of a bond must be lodged, form MM. The consent must be signed by the legal guardian of the minor or the minor himself duly assisted by his legal guardians. No additional consent is necessary as no immovable property is being alienated and the bond has already been paid.

10.2 Part payment:

When a mortgagor has paid a part of his debt to the mortgagee an endorsement of part payment can be made on this bond.

Reduction in cover:

When a mortgage bond is passed as a covering bond a part payment cannot be registered but a reduction in cover must be registered. This is due to the fact that the amount owing under a covering bond fluctuates from time to time.

Form MM for both the above.

QUESTION 11

11.1 To declare the deed of alienation void.

11.2 Provided that the Purchaser still wishes to proceed with the transaction, request the Purchaser to sign a declaration that he has exercised his option in terms of section 25(15) and that he has elected not to annul the alienation on the ground of the defect.

QUESTION 12

In terms of Section 89 (5) of the National Credit Act 34 of 2005, if a credit agreement is unlawful, despite any provision of common law, any other legislation or any provision of an agreement to the contrary, a court must order that:

a) The credit agreement is void as from the date the agreement was entered into.

QUESTION 13

JOAN JILLSON

Identity Number: 420916 3943 002

Unmarried

(Now married out of Community of property)

See RCR 7/1954

QUESTION 14

NOTE:

*The facts in the question were taken from those in the case of **Cool Ideas 1186 CC v Hubbard and another [2014] ZACC 16***

*Candidates must show, in their legal opinion, that they have a working knowledge of the Housing Consumer's Protection Measures Act No 95 of 1998. The registration with the National Home Builders Council (NHBRC) has become important and the result of non-registration, **or incorrect registration**, has serious consequences for banks, contractors, home owners and in particular, conveyancers acting for the aforementioned.*

The syllabus requires candidates to have a working knowledge of, inter alia, judgements of our Courts relating to the Acts mentioned.

Candidates are not necessarily expected to come to the conclusion as per the judgement. They must, however, show an ability to apply the knowledge of the relevant Act and record that knowledge in the form of an opinion. They must thus show, at least, the following;

1. Home builders are required to be registered with the NHBRC and also have to register the specific project (building).
2. There are requirements relating to the conclusion of agreements as per section 13 of the said Act.
3. Agreements concluded shall be deemed to include certain specific warranties.
4. The responsibilities of the conveyancer in terms of section 18 of the Act to ensure that:
 - a) The home builder is registered in terms of the Act
 - b) The home (building) has been enrolled with the NHBRC
 - c) The prescribed fees have been paid in respect of the enrolments

In the aforesaid case the Court found that the fact that **Cool Ideas**, who entered into the agreement, was not registered with the NHBRC as a Home Builder, prohibited it from collecting funds in terms of the agreement, despite the fact that its "sub-contractor" and the project were registered.

QUESTION 15

In terms of section 1(1)(e)(i) of the Intestate Succession Act No 81 of 1987 the estate shall divide into two equal shares and the descendants related to the deceased mother will inherit one half of the estate and the descendants related through the deceased father will inherit the other half of the estate.

The son of his deceased mother, James, will inherit a one half share of the estate and the 2 children of his deceased father will each inherit a one quarter share each (comprising the other half share).

The immovable property will thus vest as per the above.

The vesting will thus read (candidates may use own particulars):

1. James ...
Identity number ...
Marital status

As to a ½ (one half) share
2. Craig ...
Identity number ...
Marital status

As to a ¼ (one quarter) share

3. Jemma ...
Identity number ...
Marital status

As to a ¼ (one quarter) share



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