

THE REPUBLIC OF SOUTH AFRICA

CONVEYANCING EXAMINATION

PART 2

14 APRIL 2021

4 Hours

09:00 - 13:15

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 4 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. Details, especially the description of properties, may be changed to comply with the practice prevailing at your Deeds Office. However, if a question relates to farm property, the description may **NOT** be changed to that of an erf in a township.
5. Candidates must furnish such further details as may be necessary to draw properly the required deeds or documents, e.g. abbreviations (ID XXX), alphabetical symbols for names, and "etc."/"...." are unacceptable.
6. Deeds and documents to be drawn must comply fully with the requirements of the Deeds Registries Act and regulations, i.e. as if intended for lodgement in a deeds registry.
7. Candidates **MUST ANSWER ALL** questions.
8. 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: [200]

QUESTION 1**[20]**

- 1.1 Your client is a member of a Share Block Company. The Share Block Company has legally applied to and opened sectional title register in respect of the property of which the company operates a share block scheme. The sectional title scheme is registered as "The Breakers".

Your client has requested to convert his right to use unit 20 by virtue of his agreement with the company into ownership and transfer of the unit. You are the conveyancer and such conversion must now be registered at the Deeds Registry.

Draw the certificate in terms of Section 15B(3) of the Sectional Titles Act 95 of 1986 which must accompany the deed of transfer from the Share Block Company to your client. Add such further particulars as may be required to fully comply with the relevant legislation. (15)

- 1.2 Assume that the transfer, mentioned in question 1.1, is the first transfer of the Share Block Company to any of its members. List the documents to be filed in the Deeds Office to register the transfer to your client. You will be penalised should you list unnecessary documents. (5)

QUESTION 2**[25]**

- 2.1 Draw the causa and vesting clause of a deed of transfer in the following instances, commencing with the words

"And, the Appearer declared that",

providing your own further particulars where required:

- 2.1.1 A farm property is registered in the name of John Mabusu, unmarried, who thereafter married Susan out of community of property. John Mabusu died on 15 March 2019 and in his will, which was signed at Bergville on 31 May 2015, he bequeathed his entire estate to his wife subject to the condition that, on her death, such inheritance must devolve on their son, Maxwell. The inheritance is excluded from the community of property of any marriage which any heir may conclude and the marital power. John was survived by his wife, Susan and son, Maxwell. Susan Mabusu accepted the terms of the will and requested transfer in terms thereof. Draw the causa and vesting clause as instructed above. (7)
- 2.1.2 Susan Mabusu has, during 2020, taken transfer of the property as set out in 2.1.1 above. She no longer requires to live on the property inherited and instructs you to now transfer the property to her son, Maxwell. Maxwell has, in January 2021, solemnized and registered a civil partnership with Joseph Lucky without entering into an antenuptial contract. Draw the causa and vesting clause as instructed above. (4)

2.2 The property description in John Mbasu's title deed, Deed of Transfer No. T1483/1995 is as follows:

Portion 1 of the farm Digger's Rest, Registration Division JQ, The Province of Gauteng

Measuring 15,8121 (fifteen comma eight one two one) hectares

As will appear from the annexed diagram SG No. A245/1994 and held by Deed of Transfer No. T289/1994.

2.2.1 Draw the extending clause as it will appear in the deed of transfer from John Mbasu's estate to Susan Mbasu; and (4)

2.2.2 draw the extending clause in the deed of transfer from Susan Mbasu to the son, Maxwell. She holds the property by virtue of Deed of Transfer T23/2020. (4)

2.3 Is any transfer duty payable in respect of any one (or both) of the transfers contemplated in 2.1.1 and 2.1.2 above? (1)

2.4 Will the power of attorney in each of the above transfers require any endorsements of certificates and, if so, what endorsement/s or certificate/s? (2)

2.5 What documents and deeds, other than the new deed of transfer, will you be required to lodge in a Deeds Registry for the registration of the transfer contemplated in 2.1.1 above? (3)

QUESTION 3 **[15]**

John Smith, a bachelor, died on 4 July 2020. In his will dated 10 August 2018 he bequeathed his entire estate to Sue Smith, Joan Smith and David Smith, who are the children of his brother, Peter. He appointed Peter Higgs as executor.

John Smith provided in his will that, should any of his heirs not have reached the age of 21 years, the inheritance of such heir must be held in trust by his trustees until such heir has reached the age of 21 years. He appointed Best Bank as trustee in his estate.

Sue was born on 23 September 2003. Joan was born on 16 December 2005 and David on 1 January 2007. They are all unmarried.

Draw the document that will be required by a Registrar of Deeds to divest the estate of the late John Smith of Erf 12 Camperdown registered in the name of the late John Smith by virtue of Deed of Transfer T12/2008, Section 3 in the sectional title scheme "Hellfire" which is registered in the name of the late John Smith by Deed of Transfer ST 3333/2010 and an exclusive use area Garden G1, held by Notarial Deed of Cession SK 123/2010. Provide your own further details.

QUESTION 4**[15]**

Graham Waring, married out of community of property, is the registered owner of Erf No. 444 Summerton, in extent 496 square metres, by Deed of Transfer No. T7739/2018. The property, presently unmortgaged, is subject to a registered lease No. K319/2018 in favour of John Hampshire, married in community of property to Joan Hampshire, for a period of 15 years. The lessees are in occupation of the property pursuant to the lease.

Waring has applied to Best Bank Ltd for a loan of R100,000.00 which has been granted subject to registration of a first bond by Waring over Erf 444 Summerton with a contingency provision of R20 000.00 provided that the lessees waive preference in favour of the bond. The waiver is to be achieved in the most cost effective manner.

4.1 Describe the property for the purpose of the bond, complying fully with Deeds Registry Regulation 41. (5)

4.2 Draw the waiver for the purpose of the bond document. (10)

QUESTION 5**[10]**

Quentin Investments CC is the registered owner by Deed of Transfer No. T 5531/1995 of Erf 543 Mountainside, in extent 3000 square metres. The title deed reflects that the erf is entitled to the following servitude which was created in Notarial Deed of Servitude No. K 432/1952S, namely:

"The said Erf No. 543 Mountainside is entitled to a servitude right of way ten (10) metres wide over Erf No. 542 Mountainside, measuring 1000 square metres, held by Deed of Transfer No. 9876/1948, along and parallel to the entire length of the northern boundary of the said Erf No. 542 Mountainside marked AB on the diagram No. 2112/1948 thereof annexed to the said Deed of Transfer No. T 9876/1948".

Quentin Investments CC (hereinafter in this question referred to as the developer) proposes a sectional title development in phases (further building or buildings and/or vertical and/or horizontal extensions of existing building or buildings) over a maximum period of ten years on the property. The first phase will consist of a block of three flats.

The scheme is to be known as "The Belvedere".

Draw the conveyancer's certificate in terms of Section 11(3)(b) of the Sectional Titles Act 1986. Provide your own further details.

QUESTION 6**[15]**

Jan Snyman, identity no. 801010 5001 08 2, unmarried, is the mortgagee under mortgage bond B 888/2015, passed in his favour by Syringa Investments CC for an amount of R925 000.00.

One of Snyman's creditors, Secure Investments (Proprietary) Limited, has caused Snyman's rights under the bond to be attached by the Sheriff, who sold these rights in execution to Secure Investments (Proprietary) Limited for R810 000.00.

You have been instructed to prepare the necessary documentation to vest the rights in the bond in the name of Secure Investments (Proprietary) Limited. You ascertain that Snyman has disappeared and that nobody including the sheriff, has been able to locate the bond in question.

Draw the documents to be lodged in the Deeds Office in view of the foregoing facts, so as to ensure that Secure Investments (Proprietary) Limited becomes the registered holder of the bond.

QUESTION 7 **[10]**

Asmara Investments (Proprietary) Limited has sold Erf 22 Winterskloof, in extent 3000 square metres, to Linda Naidoo for R300 000,00. That property is, for all practical purposes, the only asset in said company.

You are instructed to transfer the property to the purchaser.

Draw whatever resolution(s) you may require to enable you to register the transfer.

QUESTION 8 **[8]**

Jack Russell is the owner of a property which is subject to a bond in favour of Best Bank Limited. Russell failed to comply with his obligations in terms of the bond and the bank instituted action against Russell and the property was duly sold by the sheriff by public auction.

The bank is not in possession of the title deed and Russell cannot be traced.

- 8.1 Draw the causa in the deed of transfer from the sheriff to the purchaser. Provide your own further details. (6)
- 8.2 What must be done regarding the title deed? (2)

QUESTION 9 **[19]**

ABC Townships CC is the owner of the township Iringa. The township title is Certificate of Registered Title T8000/2017 and the general plan has been approved by the Surveyor-General under number S.G No. 5601/2018.

Your answers to the following questions must contain the correct details as supplied above and in the questions.

- 9.1 You receive instructions from the township owner to transfer Erf 100 in the township to the purchaser thereof. Draw the full property description and the extending clause as it must appear in the deed of transfer you are to register. Supply your own further details. (4)

- 9.2 The transfer referred to in 9.1 above was registered under number T 8269/2018. You receive instructions to transfer the erf to a new purchaser. Draw the extending clause as it will appear in the new deed of transfer. (3)
- 9.3 The property was sold again before the transfer referred to in 9.2 has been registered and you receive instructions to attend to the registration of this transfer simultaneously with the transfer referred to in 9.2. Draw the extending clause as it will appear in this transfer. (4)
- 9.4 The deed of transfer referred to in 9.3 was registered under number T120500/2020. A diagram to subdivide the property has been approved by the Surveyor-General under number S.G No. 5000/2020. You receive instructions to transfer the surveyed portion. Draw the extending clause as it will appear in this deed of transfer. (4)
- 9.5 The Remaining Extent of Erf 100 Iringa has now been sold and you receive instructions to transfer the remaining extent of the erf. Draw the extending clause as it will appear in this deed of transfer. (4)

QUESTION 10

[20]

Albert and Brendan Jones, twin brothers, jointly own Erf 986 Durban, in extent 2 500 square metres, under Deed of Transfer No. T3003/2001.

That property is presently bond free. The title deed contains no conditions of title material for present purposes. The property is vacant land.

The brothers have decided to partition the property into two entities, namely;

- a) Portion 1 and Remainder. Portion 1, in extent 1 750 square metres, comprises the northerly half of the present property and adjoins a public road,
- b) the Remainder, which comprises the southerly portion of Erf 986.

The necessary permission to subdivide the property has been obtained and no conditions of title have been imposed in that regard. A subdivisational diagram has been approved by the Surveyor-General in respect of Portion 1.

Albert, who is married in community of property to Marina Jones, is to receive transfer of Portion 1, whilst Brendan, who is married out of community of property to Sylvia Jones, is to receive transfer of the Remainder. The two pieces of land are of equal value and no equalizing consideration of any kind will be payable.

Albert intends erecting a dwelling on Portion 1 once transfer thereof has been passed to him. The proposed Portion 1 of Erf 986 Durban slopes from the north down to the south and Albert wishes to ensure that the beautiful sea view presently enjoyed by the proposed Portion 1 will not be obstructed by his brother or any future owner of the Remainder erecting a dwelling on the Remainder, which consists of a level piece of ground, any building or structure higher than 8 metres above the level of the ground on which it stands and by any trees being allowed to grow on the Remainder exceeding

that height limit. Brendan is quite happy to accommodate his brother in that regard and to afford him the necessary protection.

Draw the necessary power of attorney to transfer, which must also embody the agreement to partition, required to give effect to the above arrangements.

QUESTION 11

[23]

11.1 David Mokoena and his wife Salumina Mokoena, married in community of property to each other, are the registered owners of Erf 52 Dawnville. They executed a joint will at Dawnville on 20 October 2016. The following appears from the will:

- that the survivor is entitled to a usufruct over the property
- there is massing
- their children are the heirs

The survivor did not repudiate the will.

David died on 20 December 2019. The testators' eldest son, John, was appointed as executor. He accepted the appointment.

Draw the power of attorney to transfer the property to the heirs. David was survived by his wife, son and two daughters. Provide all further particulars that may be required to complete the power of attorney.

It is expected that candidates will provide the power of attorney with a properly drawn causa from the facts available above. The power of attorney need not be provided with the usual "general causa". (18)

11.2 You as conveyancer have signed the preparing clause on the power of attorney. Discuss what your responsibilities are regarding the executor who signed the power of attorney. (3)

11.3 Is any transfer duty payable? Discuss briefly. (2)

QUESTION 12

[8]

David Cooke makes an offer to your client John Smith, to purchase a property from him. The term of the offer to purchase are such that transfer will only take place in 18 months' time, and is subject to the purchaser receiving funds from the proceeds of the sale of certain shares he owns by 15 July 2021.

Notwithstanding the suspensive condition and the fact that transfer is still some time away, the price offered is such a good one that your client wishes to accept the offer.

As a prudent conveyancer you suggest that a suitable clause be incorporated in the offer to afford your client an opportunity of possibly accepting another offer in the interim period on terms more advantageous.

Draft the clause.

QUESTION 13**[6]**

What is the position if an insolvent, before the sequestration of his estate, entered into a contract for the acquisition of immovable property which was not transferred to him prior to his insolvency? You must specifically make reference to the seller's options and rights in your answer.

QUESTION 14**[6]**

- 14.1 Briefly discuss the difference between "zero-rating" and "VAT exempt" in terms of the Value Added Tax Act 89/1991. (4)
- 14.2 What are the requirements for a transaction to qualify as a zero-rated transaction in terms of the Value Added Tax Act 89/1991. (2)

- THE END -

LAW SOCIETY
OF SOUTH AFRICA