

CONVEYANCING
PART 2
6 SEPTEMBER 2017
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 An endorsement in terms of section 45 (bis) (i) (a) of the Deeds Registries Act in terms of which the former spouse's ½ share is transferred to the applicant. The bond can be dealt with in the same manner (section 45(2)).
- 1.2 The applicant Dawn Lindberg.
- 1.3 Application in terms of section 45 (bis)(1)(a);
Transfer duty exemption certificate;
Rates clearance certificate;
Certified copy (by Registrar of the High Court) of the Divorce order and settlement agreement;
Title Deed – original.
- 1.4 The Estate of Des must be released from the operation of the bond and Dawn must be substituted as the sole debtor thereunder.

QUESTION 2

My advice to A will be that he is not entitled to receive the deposit – see section 26 of the Alienation of Land Act. The diagram for the property has not yet been approved and is not registrable and the seller (A) is not entitled to receive the deposit in terms of the Alienation of land Act. However –

- 1) The seller (A) may entrust to an attorney or estate agent a consideration to be kept in trust for the benefit of the purchaser in terms of the sale agreement; or
- 2) The seller (A) may furnish the purchaser with an unconditional irrevocable guarantee by a banking institution or by a registered insurer in terms of which the amount of the deposit will be repaid to the purchaser on a given date if the transfer has not been registered by then.

QUESTION 3.1

CASE NO 1

Wife B	-	$\frac{1}{2} + \frac{1}{6}$
Child X	-	$\frac{1}{6}^{\text{th}}$
Stepchild Z	-	Nil
Adopted Child F	-	$\frac{1}{6}^{\text{th}}$
Mother M	-	Nil
Father F	-	Nil

SHAREHOLDING

1. WIFE B $\frac{1}{2} + \frac{1}{6}^{\text{th}} = \frac{2}{3}$ (one half share by virtue of marriage in community of property plus a child's share)
2. CHILD X $\frac{1}{6}^{\text{th}}$ (child's share)
3. ADOPTED CHILD X $\frac{1}{6}^{\text{th}}$ (child's share)

QUESTION 3.2

CASE NO 2

X inherits $\frac{1}{2}$ share by virtue of MICOP B, Z, A, and X each inherit $\frac{1}{12}$ share. C + D each inherit $\frac{1}{24}$ share by representation.

SHAREHOLDING

$$X = 2/3 (1/2 + 1/12)$$

B, Z, A and Y = 1/12 share each

C + D = 1/24 share each.

ADDITIONAL DOCUMENTS TO BE LODGED

1. Next of Kin Affidavit
2. Affidavit by executor stating deceased died intestate
3. Section 42(1) certificate
4. Liquidation and Distribution Account
5. Proof of marriage
6. Proof of next of kin of predeceased child

QUESTION 3.3

CASE NO 3

Father B = 50% = 1/2 share

Uncle C = 25% = 1/4 share

Aunt D = 25% = 1/4 share

ADDITIONAL DOCUMENTS TO BE LODGED

1. Next of Kin Affidavit in Est of A
2. Affidavit by Executor re: Intestacy
3. Next of Kin Affidavit in Mother's parents' estate to prove C and D inherit

QUESTION 4

No, there is no sanction for a representative to donate property in terms of the administration of Estates Act 66 of 1965 (see RCR).

QUESTION 5

In terms of Section 6 of the DRA the Deed under which the land was held immediately prior to the registration of the deed which is cancelled by a court order, shall be revived to the extent of such cancellation and the registrar shall cancel the relevant endorsement therein evidencing registration of the cancelled deed.

QUESTION 6

Use the provisions of section 76(4) and stipulate in the power of attorney to pass transfer of portion 1 that the exercise of the servitude is restricted to the remainder still held by the transferor.

QUESTION 7

A rectification from Jan Van Zyl (the registered owner of Erf 124 Bellville) to Chris Le Roux must be done and another rectification transfer from Chris le Roux (the registered owner of Erf 123 Bellville) Jan Van Zyl must be effected.

The causa in the power of attorney and deed of transfer must set out the full facts and circumstances under which the error occurred as well as how it should be rectified.

A rectification transfer is exempt from the payment of transfer duty, provided the transfer duty was fully paid on the transfer(s) in which the error in registration occurred (section 9 of the Transfer Duty Act). A transfer duty exemption certificate however, still needs to be lodged.

QUESTION 8.1

If the Minister does not in terms of section 4 consent to the subdivision of any particular agricultural land in accordance with any testamentary disposition or intestate succession or to the vesting of any undivided share in such land in accordance therewith, and no agreement is reached as to a subdivision or vesting in respect of which the minister grants his consent in terms of the said section 4, the executor of the estate concerned shall realize the land or undivided share concerned, as the case may be, and dispose of the net proceeds thereof in accordance with the said testamentary disposition or intestate succession, as the case may be.

QUESTION 8.2.1

- a) A right of way, aqueduct, pipe line or conducting of electricity with a width not 15 meters;
 - a servitude which is supplementary to a servitude referred to in paragraph (a), and which has a servitude area not exceeding 225 square meters which adjoins the area of the last mentioned servitude;
- b) a usufruct over the whole of the agricultural land in favour of any one person or in favour of such person and his spouse or the survivor of them if they are married in community of property, shall not be registered by a registrar of deeds without the written consent of the Minister.

QUESTION 8.2.2

Yes, if it is for a period of less than 10 years.

QUESTION 9

9.1 The transferee shall not be entitled to sell the property to a third party without first having offered to sell the property to the transferor at the same price as offered by a willing and able purchaser.

The transferee shall give the transferor written notice of the offer received and the transferor shall be entitled within 14 days after receiving the notice, to purchase the property at the price offered by the third party.

9.2 Subject to the condition that the transferee and his successors in title shall not, without the written consent of the transferor and his successors in title as owner of erf 1234 Seaview, erect a dwelling exceeding a height at any point exceeding 75 metres above sea-level.

9.3 Subject to a servitude of the right of way, 3 metres wide, along the southern boundary of property hereby transferred, indicated by the line AB on the diagram S.G. No.678/2005 annexed hereto, in favour of Erf 101 Sunset view held by deed of transfer T4200/2001.

9.4 Subject to a life-long usufruct in favour of:

James Botha

Identity number: 400812 5000 08 8

And

Mary Botha

Identity Number

Married in community of property to each other

QUESTION 10

No, section 14(1) (b) (iii) only mentions that the heirs or the heir and the surviving spouse enter into redistribution agreement.

QUESTION 11

- 1) The owners, by unanimous resolution direct the body corporate to alienate a portion of the common property;
- 2) A diagram is prepared and approved by the Surveyor General in respect of the portion to be alienated;
- 3) Transfer is effected by the trustees of the body corporate and registration is effected by means of a deed of transfer in favour of the transferee registered by the Registrar of Deeds. The Registrar shall make appropriate endorsements on his records. The transfer must be accompanied by a copy of the resolution referred to in (1) above certified by two trustees of the body corporate;
- 4) The consent of all the bondholders in respect of units must be obtained and lodged simultaneously;
- 5) The Registrar shall notify the Surveyor-General of the reversion of the land to the land register and the Surveyor General shall make appropriate endorsements on the original sectional plan and on the deeds registry's copy.

QUESTION 12

- 12.1 Yes as long as a notarial tie agreement is registered simultaneously with the opening of the sectional title register.
- 12.2 No – Registrar's Conference Resolution 71/2009.
- 12.3 Yes, a developer may, in terms of section 27(6) of the Sectional Titles Act grant a lease over an exclusive use area.
- 12.4 The notarial deed of encroachment must be entered into by the developer (if the body corporate has not yet been established) or body corporate (if already established) on the one hand and registered owner of the neighbouring property. The mortgagee of the bond that is registered over the neighbouring land must consent to the registration of the notarial deed.
- 12.5
1. Application
 2. Two copies of the approved sectional plan of extension
 3. The sectional title deed of the section to be extended
 4. The sectional mortgage bond registered over the section

5. The consent by the mortgagee to the registration of the plan of extension
6. A certificate by architect stating that:

There is not a deviation of more than 10% in the participation quota of any section as a result of the extension; or

If there is a deviation of more than 10% a certificate from conveyancer that the mortgagees of each section in the scheme has consented to the registration of the sectional plan of extension.

12.6 Transfer duty receipt.

QUESTION 13

Draft a memorandum setting out the steps to be taken and discuss the same documents as in 12.5 above.

The following steps must be taken by the owner:

- i) obtain approval by the body corporate, authorised by special resolution of the owners;
- ii) submit through his land surveyor or architect the draft sectional plan of extension of the section to SG for approval;
- iii) Notice must be sent by registered post to each mortgagee if the deviation is more than 10%;
- iii) after approval of the sectional plan he must make application to the registrar for the registration of the sectional plan of extension.

The application for registration of a sectional plan of extension is prepared in accordance with **FORM O**.

The Registrar endorses the existing deed to the effect that the floor area of the section has been increased by the extension and advises the Surveyor General of the registration of the sectional plan of extension.

If the deviation in the participation quota of the section is not more than 10% a certificate issued by the land surveyor or architect must be lodged confirming that the deviation is not more than 10 % (even required if the extended section is not mortgaged but other sections are).

If the deviation in the participation quota is more than 10% a conveyancer certificate must be lodged stating that the mortgagee of each section in the scheme has consented to the registration of the sectional plan of extension

of that section. Mortgagees shall be deemed to have consented if they did not respond within 30 days of the dates of posting of the registered notice.

The following documents must be lodged:

- Application for registration of sectional plan of extension of section (FORM O)
- Two copies of sectional plan of extension of section
- Sectional title deed i.r.o section to be extended
- All bonds registered over section to be extended
- Certificate by either conveyancer / architect / surveyor (as described above)
- Transfer duty receipt on which the new extent is indicated

No need for clearance certificate or special resolution of body corporate to be lodged.