

**CONVEYANCING PRACTICE  
PART 2**

**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**

This agreement is especially subject to and dependent upon:

1. The sale by the purchaser of the purchaser's existing property being a unit consisting of:
  - a) Section No. 10 as shown and more fully described on Sectional Plan No. SS 200/2010 in the scheme known as MONTROSE MEWS, in respect of the land and building or buildings situate at Pietermaritzburg, in the Municipality of Pietermaritzburg, of which section the floor area, according to the said Sectional Plan is one hundred and seventy-five (175) square metres in extent; and
  - b) An undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan,

Held by virtue of Deed of Transfer Title No. ST121/2015

For a purchase price of not less than One Million Rand (R1 000 000,00) nett (after the deduction of any agent's selling commission in connection with such transaction) on or before 31 August 2019.

In this context a "sale" shall mean the conclusion of a valid and binding agreement of purchase and sale relating to the aforementioned unit, which agreement is not subject to any suspensive or resolutive condition unless such condition shall have been fulfilled within the said time limit.

2. The purchaser obtaining, on or before 31 October 2019, from a financial institution, a loan of not less than nine hundred thousand Rand (R900 000,00), such loan to be secured by the registration of a first mortgage bond over the property hereby purchased and sold and to be granted on conditions normally imposed by financial institution in connection with mortgage loans on the security of urban immovable property situate in the Pietermaritzburg Magisterial District. This condition shall be deemed to have been fulfilled if the financial institution approves the loan in writing within the aforementioned time limit.

It is expressly recorded and agreed that the aforesaid conditions operate for the benefit of the purchaser and may be waived by him at any time prior to the expiration of the time limit referred to therein by his giving written notice of such waiver to the seller.

Should the conditions under 1 and 2 above not have been fulfilled or waived by the purchaser in accordance with the provisions of the immediately preceding sub paragraph hereof within the time limits stated therein, this agreement shall ipso facto terminate and become null and void and neither party shall have any claim against the other arising therefrom.

## **QUESTION 2**

LAW SOCIETY  
OF SOUTH AFRICA

**PREPARED BY ME  
CONVEYANCER  
ALLEN OTHER**

### **APPLICATION IN TERMS OF SECTION 40(1)(b) OF ACT NO. 66 OF 1965**

I, the undersigned,

SAM SAUNDERS in my capacity as the Executor of the Estate of the late ALAN WOOD duly authorised in terms of Letters of Executorship No 5049/2007 issued by the Master of the High Court of South Africa (Kwa-Zulu Natal Provincial Division) at Pietermaritzburg dated 17 January 2007;

hereby apply to the Registrar of Deeds at Pietermaritzburg for the endorsement of Deed of Transfer No. T379/1999 in terms 40(1)(b) of Act No. 66 of 1965 to the effect that the immovable property described therein shall be administered on behalf of the beneficiaries by the Trustee appointed in terms of the will dated 10 June

2000 of the late Alan Wood, namely:

Deed of Transfer No. T379/1999 in respect of the following property:

One half share in Erf 1022 TONGAAT, situate in the Township of Tongaat, Administrative District of Kwa-Zulu Natal, Province of Kwa-Zulu Natal.

In extent: Four thousand two hundred and fifty (4250) square metres;

SIGNED at PIETERMARITZBURG this day of 9 November 2019.

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SIGNED

**If the application refers to massing and adiation, only then can the whole of the erf be dealt with.**

### **QUESTION 3**

**(As you are supplied with the Acts and Regulations, no marks will be allocated without a motivation)**

3.1 No.

The Sheriff must sign an affidavit in terms of Regulation 51(2) of Act 47 of 1937 stating that he was unable to trace the title deed. The bond need not be lodged.

3.2 No.

(Section 51(2) of DRA was amended by GNR 1096 of 2004).

3.3 No.

A certificate is required by a liquidator that a company cannot pay its debts.

3.4 No.

The title deed and bond need not be lodged.

Section 31(1) IRO the bond and Section 31(2)(b) of act 47/1937.

3.5 Yes, the title deed must be lodged. As the bond is to be cancelled an application by the bondholder in terms of Regulation 68(11) of Act 47 of 1937 must be lodged and the bond need thus not be lodged.

**QUESTION 4.1**

**PREPARED BY ME**

**CONVEYANCER**

**ALLEN OTHER**

**POWER OF ATTORNEY AND AGREEMENT TO PARTITION**

We, the undersigned

1. MARY LAMB  
Identity Number 640227 5145 086  
Unmarried
2. DELPHINIA BAXTER  
Identity Number 670513 0119 082  
Unmarried

the joint owners of:

- (a) Section No. 132 as shown and more fully described on Sectional Plan No SS 670/03 in the scheme known as DOWN UNDER in respect of the land and building or buildings situated at SUNNINGHILL EXTENSION 150 TOWNSHIP, CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY, of which section the floor area, according to the said sectional plan is 118 (One Hundred and Eighteen) square meters in extent; and
- (b) An undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan.

HELD BY Deed of Transfer Number ST 1234/2009.

and

- (a) Section No. 133 as shown and more fully described on Sectional Plan No. SS 670/03 in the scheme known as DOWN UNDER in respect of the land and building or buildings situated at SUNNINGHILL EXTENSION 150 TOWNSHIP, CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY, of

which section the floor area, according to the said sectional plan is 118 (One Hundred and Eighteen) square metres in extent; and

- (b) An undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan.

HELD BY Deed of Transfer Number ST 1234/2009.

Held by us jointly as follows:

Mary Lamb, a ½ (one half) share

Delphinia Baxter, a ½ (one half) share

in terms of Deed of Transfer No ST 1234/2009;

do hereby agree to partition the aforementioned properties and we appoint Piet Pompies with power of substitution to transfer the properties to ourselves respectively as agreed as follows:

1. MARY LAMB

Identity Number 640227 5145 086

Unmarried

- (a) Section No. 132 as shown and more fully described on Sectional Plan No SS 670/03 in the scheme known as DOWN UNDER in respect of the land and building or buildings situated at SUNNINGHILL EXTENSION 150 TOWNSHIP, CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY, of which section the floor area, according to the said sectional plan is 118 (One Hundred and Eighteen) square metres in extent; and

- (b) An undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan;

HELD BY Deed of Transfer Number ST 1234/2009;

2. DELPHINIA BAXTER

Identity Number 670513 0119 082

Unmarried

- (a) Section No. 133 as shown and more fully described on Sectional Plan No. SS 670/03 in the scheme known as DOWN UNDER in respect of the land and building or buildings situated at SUNNINGHILL EXTENSION 150 TOWNSHIP, CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY, of which section the floor area, according to the said sectional plan is 118 (One

Hundred and Eighteen) square metres in extent; and

- (b) An undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan;

HELD BY Deed of Transfer Number ST 1234/2009;

**Subject to the following condition in favour of Mary Lamb,  
Identity Number 640227 5145 086, Unmarried:**

*(Each answer will be assessed on its merits regarding this condition)*

And we declare further that for the purpose of equalising the partition, Mary Lamb will pay to Delphinia Baxter R 1 000 000.00 (One Million Rand) in consideration upon transfer of the above property to her.

And declare the value of section 132 to be R 2 000 000.00 (Two Million Rand) and the value of section 133 to be R 3 000 000.00 (Three Million Rand).

Signed at PRETORIA on \_\_\_\_\_ in the presence of the undersigned witnesses.

Witnesses

1.....  
2.....

**MARY LAMB  
DELPHINIA BAXTER**

#### **QUESTION 4.2**

In terms of Section 9(1)(g) of the Transfer Duty Act, no transfer duty is payable on partition transfers, except in respect of any consideration paid by a party to equalise the partition. Transfer duty will be paid on the amount of R1 000 000,00 by Mary Lamb.

#### **QUESTION 4.3**

The Right of Pre-Emption can be created in a Power of Attorney (RCR 37/2005 and Section 26(2)(d) and Section 67 of Act No. 47 of 1937). To create it notarially will be more expensive.

Transfer Duty will be payable by the acquirer of the right, Mary Lamb, on the value of the right.

### **QUESTION 5**

Erf 800 in the Township Kube, Registration Division J.R. Gauteng Province Measuring 5716 (FIVE THOUSAND SEVEN HUNDRED AND SIXTEEN) square metres as will appear from the annexed diagram S.G. No. 25/2018.

Subject to the following conditions:

- A. No trade of business in wine, spirits or beer or other spirituous liquors, shall be carried on, on the property.
- B. The former Portion 3 of ERF 699 Kube, indicated by the figure AabD on the said diagram S.G. No. 25/2017 is subject to a 2 metre wide servitude for municipal services in favour of the Bela Local Municipality, together with ancillary rights, the centre line of which servitude is indicated by the line vx on the said diagram S.G. No. 25/2002 as will more fully appear from Notarial Deed No. K7008/2017 S with diagram annexed thereto.
- C. The former ERF 747 Kube, indicated by the figure aBCd on the said diagram S.G. No. 25/2017, is subject to a 5 metre wide right of way servitude in favour of Highbrow Holdings Proprietary Limited, the eastern boundary of which servitude is indicated by the line BC on the said diagram S.G. No. 25/2017 as will more fully appear from Notarial Deed No. K1000/2000S.

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

**NB.** *Condition A could also have been repeated under each component*

### **QUESTION 6.1**

**Prepared by me**

**CONVEYANCER  
FULL NAMES**

### **APPLICATION**

I, James Brown  
Identity Number 680605 5054 08 1

Unmarried

hereby apply to the Registrar of Deeds at Pretoria in terms of Section 43 of Act 47 of 1937 for the issuing to me of a Certificate of Registered Title in respect of

Portion 1 of ERF 119 in the township Farrar Park, Registration Division J. P. Gauteng  
Measuring 800 (EIGHT HUNDRED) square metres

Held by Deed of Transfer T9753/1998  
Indicated on Subdivisional Diagram S.G. No. 12/1999

SIGNED AT \_\_\_\_\_ on \_\_\_\_\_

AS WITNESSES

1. \_\_\_\_\_
2. \_\_\_\_\_

**Note: Witnesses are optional**

### **QUESTION 6.2**

The servitude can be created in the power of attorney to pass transfer of the Remaining Extent of ERF 119 to the purchaser.

### **QUESTION 6.3**

Entitled to a servitude of right of way, 3 (three) metres wide, over Portion 1 of ERF 119 Farrar Park, held by Certificate of Registered Title No.T \_\_\_\_\_ parallel to and along the entire length of the eastern boundary of the said Portion 1 indicated by the line BC on Subdivisional Diagram S.G.No.12/1999.

### **QUESTION 7**

7.1 See sections 27 (4)(b) and (c) of the Sectional Titles Act and RCR 49/2005 and RCR 2/2006.



7.2 Yes. See RCR 49/2005 and RCR 2/2006.

**QUESTION 8.1**

**Prepared by me**

**CONVEYANCER**

**Full Names**

**POWER OF ATTORNEY**

We, the undersigned

1. Peter Hammond, in my capacity as the nominee of Best Bank Limited and as such the executor in the estate of the late Mary Smith  
Duly appointed thereto by virtue of Letters of Executorship No 851/2017 issued by the Maser of the High Court at Pretoria

and

2. Peter Smith  
in my capacity as executor in the estate of the late John Smith  
duly appointed thereto by virtue of Letters of Executorship No 387/2018 issued  
by the Master of the High Court at Pretoria

hereby nominate and appoint Henry Adams to be our lawful agent and to appear before the Registrar of Deeds at Pretoria and to declare that the executor in the estate of the late Mary Smith did on 2 May 2019 sell

Erf 88 in the township Choma, Registration Division IQ North-West Province

Measuring 1000 (ONE THOUSAND) square metres

Held by Deed of Transfer 1'24511990

for the sum of R250 000,00 (two hundred and fifty thousand rand)

to

Gregory Tucker  
Identity Number 680605 5054 08 6  
Unmarried

and to transfer the said property to the said purchaser.

SIGNED AT            On

AS WITNESSES

1. \_\_\_\_\_
2. \_\_\_\_\_

**QUESTION 8.2**

- Existing title deed
- Draft deed of transfer in favour of the purchaser
- Power of Attorney
- Transfer duty receipt
- Clearance certificate
- The consent of the Master of the High Court in terms of Section 42(2) of Act 66/1965 endorsed on the power of attorney.

**QUESTION 9.1**

Prepared by me

**CONVEYANCER  
FULL NAMES**

**APPLICATION**

We the undersigned:

1. ALBERT DE WET  
Identity No 751215 543208 8  
Unmarried, and
  
2. HENDRINA DE WET  
Identity No 8050321 045608 3  
Unmarried

do hereby apply to the Registrar of Deeds at Pietermaritzburg for the endorsing of Deed of Transfer No T4457/1972, in terms of section 25(3) of Act 47 of 1937 to the effect that:

we are entitled to:

Erf 400 in the Township Kasama, Registration Division I.Q. Gauteng measuring 1000 (one thousand) square metres;  
as we are the children of SUSAN DE WET and have now been ascertained due to the death of SUSAN DE WET on 14 January 2019.

SIGNED AT \_\_\_\_\_ on \_\_\_\_\_

AS WITNESSES

1. \_\_\_\_\_
2. \_\_\_\_\_

**QUESTION 9.2**

- Application
- Title deed
- Bond, for disposal (if applicable)
- **Proof of children in the form of an affidavit of next of kin.**

**QUESTION 10**

The property hereby transferred is

1. Subject to a servitude area, 25 (twenty five) square metres in extent in favour of the Remaining Extent of

the said farm Elim measuring 500, 2588 (five hundred comma two five eight eight) hectares, held by Deed of Transfer T8500/1996 for use as a pump-house together with the right to draw water from the adjacent dam together with the right of access over the property held hereunder to the servitude area for maintenance purposes, which servitude is indicated by the figure abcd on the said diagram S.G. No. 800/2017, and

2. Subject to a servitude of aqueduct, 2 (two) metres wide in favour of the said Remaining Extent of the farm Elim, together with the right of access over the property held hereunder for maintenance purposes, the centre line of which servitude is indicated by the line efghj on the said diagram S.G. No. 800/2017.

### **QUESTION 11**

Annexure

IN TERMS OF SECTION 11(3)(b) OF ACT NO. 95/1986

Name of scheme : Monga Mews

Full names and address of developers : Rush & San Badja, 135 Church Street,  
MONGA, 9745

Number of Title Deed of Land : T872/1979

General Plan No. : SG 1803/1979

Local Authority : Bloemfontein

I, the undersigned, JAMES FISCHER, Conveyancer, do hereby certify that

1. In terms of Deed of Transfer No. T872/1979 the following servitudes and conditions burden or benefit ERF 352, MONGA:

1. (a) – (c)
2. (a) – (e)
3. (a) and (b)

2. The developers have, in terms of Section 11(2), read with Section 25(1) of Act No. 95 of 1986, reserved to themselves or their successors in title the right to erect and complete from time to time within a period of 5(FIVE) years reckoned from the date of issue to them of the relevant Certificate of Real Right, for their personal account, further buildings on the specified part of the common property as indicated on the plan referred to in Section 25(2)(a) of the Act, to be filed in the office of the Registrar of Deeds. BLOEMFONTEIN, and to divide such buildings into sections and common property and to confer the right

of exclusive use over parts of such common property upon the owner or owners of one or more units.

3. No further conditions have been imposed by the developer.

SIGNED AT MONGA on this .....

\_\_\_\_\_  
SIGNED

**QUESTION 12**

Prepared by me

\_\_\_\_\_  
CONVEYANCER  
LEANDRI BOTHA

**APPLICATION**

**in terms of Section 3(1)(v) of the Deeds Registries Act No. 47 of 1937**

I, the undersigned,

TEBOGO TLADI

duly authorised hereto by a resolution of the Trustees for the time being of the

JURIE BOTES TRUST

Registration number IT111/2004

acting in terms of Letters of Authority issued by the Master of the High Court of South Africa Gauteng Division, Pretoria at Pretoria on 25 April 2016(T) ("The Trust")

do hereby declare under oath:

1. That the Trust is the registered owner of the following property: -

ERF 123 PATRYSPARK TOWNSHIP

REGISTRATION DIVISION L.S. LIMPOPO PROVINCE  
IN EXTENT: 400 (FOUR HUNDRED) SQUARE METRES

HELD BY DEED OF TRANSFER T11/2018

2. That when the Trust was initially registered, it was registered with the registration number "110/2016(T)" by the Office of the Master of the High Court of South Africa Gauteng Division, Pretoria. Attached hereto find the relevant Letters of Authority;
3. That when the last Letters of Authority was issued, the registration number was amended by the Office of the Master of the High Court of South Africa Gauteng Division, Pretoria to "111/2016(T)" as the previous number was already allocated to another trust. Attached hereto find the relevant Letters of Authority;
4. That the Trust accordingly applies to the Registrar of Deeds at Limpopo for the endorsement of Deed of Transfer T11/2018 to reflect the amendment of the abovementioned Trust Number thereon;
5. That there are no other documents to be amended at the Office of the Registrar of Deeds Limpopo at Polokwane;
6. That the amendment will not have the effect of transferring any real right.

DATED at POLOKWANE this \_\_\_\_\_ day of \_\_\_\_\_ 2018.

AS WITNESSES:

1. \_\_\_\_\_  
For the authorised Trustee
2. \_\_\_\_\_

**QUESTION 13**

Prepared by me

\_\_\_\_\_  
**CONVEYANCER**  
**LEANDRI BOTHA**

## APPLICATION

### In terms of Section 90(1) of the Deeds Registries Act 47 of 1937

I, the undersigned,

TEBOGO TLADI

in my capacity as executor in the estate of the late JURIE BOTES duly authorised hereto by virtue of letters of executorship 246/2017 dated 12 October 2017 issued by the Master of the High Court, Limpopo do hereby declare under oath and say:

1. that the late JURIE BOTES was the registered owner of  
ERF 123 PATRYSPARK TOWNSHIP  
REGISTRATION DIVISION L.S. LIMPOPO PROVINCE  
IN EXTENT: 400 (FOUR HUNDRED) SQUARE METRES  
Held by Deed of Transfer T789/1996
2. that the above-mentioned property is subject to a Notarial Lease K1234/1998;
3. that the payments have not been made in terms of the lease;
4. that the required notice was given to the lessee.

In light thereof, I hereby apply to the Registrar of Deeds Limpopo at Polokwane in terms of the above section to note cancellation of Notarial Lease K1234/1998 due to failure on the part of the lease, TCM Proprietary Limited Registration Number 1999/5423123/07 to make the periodic payments referred to therein regularly.

\_\_\_\_\_  
The Executor

I certify that the Deponent acknowledged that he understands the contents of the above declaration, that I duly administered the oath in terms of Regulation No R 1258 of the 21st July 1972, as amended and that thereafter the Deponent in my presence signed the declaration at \_\_\_\_\_ on \_\_\_\_ September 2018.

\_\_\_\_\_  
COMMISSIONER OF OATHS

### **QUESTION 14**

- 14.1 Section 27(1) of the Sectional Titles Act - The developer imposes a condition in terms of Section 11(2) by which the right to the exclusive use of parts of the common property delineated for this purpose on the sectional plan are conferred upon owners of sections. A survey is conducted and individual

exclusive use areas pegged. This creates a real right, which is urban immovable property and can be mortgaged. It is the more expensive method of creating an exclusive use right, but is the most secure, as the owner is issued with a title deed to the exclusive use area.

- 14.2 Section 10 (7) of the Sectional Titles Schemes Management Act - The developer may make rules which confer rights of exclusive use and enjoyment of parts of the common property upon members of the body corporate. Such rules do not create rights as contemplated in Section 27(6). An exclusive use layout plan is prepared, on which must be clearly indicated the locality of the distinctively numbered exclusive use area, and the purpose for which such parts may be used. It must include a schedule indicating to which member each such part is allocated. The owner does not obtain an individual title deed, and the right of exclusive use cannot be mortgaged. The owner's right is reasonably secure.



LAW SOCIETY  
OF SOUTH AFRICA