

**CONVEYANCING PRACTICE
PART 2**

28 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

1.1

Prepared by me,

CONVEYANCER
Full names

APPLICATION (IN TERMS OF SECTION 37(1) OF ACT NO. 47 OF 1937)

I, the undersigned,

PAUL BROWN
Identity Number 601010 5050 08 7
Married Out of Community of Property

do hereby apply to the Registrar of Deeds at Pietermaritzburg in terms of the Section 37 for the issue to me of a Certificate of Registered Title in terms of Section 34(1) of Act No. 47 of 1937 in respect of:

½ (ONE-HALF) SHARE in and to ERF 74 HAYFIELD
Registration Division - FT,

Province of KwaZulu-Natal,
in extent: 600 (Six Hundred) square metres.
HELD by me under Deed of Transfer No. T 600/2014

DATED at this day of

As Witnesses:

1. _____
2. _____

P BROWN

Examiner: The reference to the relevant section in the heading and inclusion of witnesses are not preemptory, candidates should not be penalised if omitted.

1.2

Prepared by me

CONVEYANCER
Full names

APPLICATION AND AFFIDAVIT IN TERMS OF SECTION 4(1)(b) OF ACT NO. 47 OF 1937

I, the undersigned,

PAUL BROWN
Identity Number 601010 5050 08 7
Married Out of Community of Property

DO HEREBY MAKE OATH AND SAY

1. That my correct identity number is 6010105050087.
2. That my identity number is incorrectly set forth as 611010 5010 08 7 in Antenuptial Contract No. H 200/1991.
3. That my identity number is not incorrectly set forth in any other deed or document registered or filed in the Deeds Registry, Pietermaritzburg.
4. That the error was due to a mistake in conveyancing.
5. The amendment will not have the effect of transferring any right.

I hereby apply to the Registrar of Deeds at Pietermaritzburg of the amendment of the said Antenuptial Contract No. H200/1991 to reflect my correct identity number as 601010 5050 08

P BROWN

Signed and sworn to at _____ on this _____, the Deponent having acknowledged that he knows and understands the contents of this Affidavit.

Full details of Commissioner of oaths

EXAMINER NOTE: Both spouses must apply or the non-applying spouse must provide separate consent in terms of section 4(1) (b) (iv)

QUESTION 2

2.1 And the Appearer declared that WHEREAS the undermentioned transferee estate is entitled to the undermentioned property as intestate heir, in terms of section 1(1)(a) of Act 81/1987 in the intestate estate of the above deceased who died intestate on 10 July 2000, and who was married in community of property to.....which community of property was excluded in a deed of donation dated 15 January 2000;

Now therefore he, in his capacity as conveyancer aforesaid, did by these presents cede and transfer to and on behalf of:

The Estate Late Ben Bender

Its heirs, executors, administrators or assigns in full and free property.

2.2 Susan Snow, Executrix in the Estate Late Ben Bender, acting under Letters of Executorship No 042/2000 issued by the Master of the High Court Cape Town, on 12 November 2000.

- 2.3
- Existing deed of transfer
 - Draft Deed
 - Rates Clearance Certificate
 - Transfer Duty Exemption Certificate / VAT declaration endorsed by SARS
 - Section 42(1) Act 66/1965 Certificate
 - Master's certified copy of next of kin affidavit
 - Affidavit by Executor to the effect that a transferor died intestate
 - Certificate by conveyancer that no joint estate involved
 - Power of Attorney to pass transfer.

QUESTION 3

3.1 Subject to a servitude of right of way, route of which is to be agreed upon by the registered owners at a later stage, in favour of the Remaining Extent of the Farm Wellsaid No. 123, Measuring 5,3680 (Five comma three six eight naught) Hectares and held by Deed of Transfer No T56/1990.

3.2 Subject to a road servitude 3 (three) metres wide, parallel to and extending all along the whole of the south eastern boundary of the said Portion 10 of the Farm Saxenburg No. 137, indicated by the line AB on Diagram SG No. 43/1996 in favour of

the Remaining extent of the said Farm Saxenburg No. 137, Measuring 20, 1312 (Twenty comma one three one two) Hectares, Held by Certificate of Consolidated Title No T612/1970.

- 3.3 Subject to a Servitude of right of way 2 (two) metres wide, represented by the figure ABCD on Diagram No 33/1997 annexed hereto in favour of the Remaining extent of Erf 31 Bethulie, held by Deed of Transfer T33/2010.

QUESTION 4

- 4.1 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.
- 4.2 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.

QUESTION 5

5.1	Received from purchaser		R110 000-00
	Received from bank		80 000-00
	Received in respect of costs		2 000-00
	Paid purchase price	R200 000-00	
	Paid transfer costs	6 400-00	
	Paid occupational rental 1/2/2002 - 15/4/2018	2 250-00	
	Paid levies 1/2/2002 - 30/4/2018	900-00	
		<u>R 209 550-00</u>	<u>R192 000-00</u>
	Shortfall		17 050-00
			<u>R210 550-00</u>

- 5.2 I shall instruct the executing conveyancer not to register the transfer on 16 April 2018. I shall immediately request the purchase to pay the shortfall (together with a further provision for occupational rental) to me in cash or with a bank cheque whereafter the transfer will be registered.

QUESTION 6

Prepared by me

**CONVEYANCER
FULL NAMES**

CESSION

I, Lance Woods, in my capacity as executor in the Estate of the late Peter Hays duly authorised thereto by Letters of Executorship No 1200/2018 issued by the Master of the High Court at Pretoria,

The said Estate being the legal holder of the undermentioned bond, namely:

No: B725/2009

Passed by Gregory Smith, Identity number: 880605 5054 08 1, Unmarried

In favour of: Peter Hays Identity number.....status

For the sum of R100 000,00 (ONE HUNDRED THOUSAND RAND) together with an amount of R20 000,00 (TWENTY THOUSAND RAND) being the additional amount

Do hereby cede and make over all the right title and interest in the abovementioned bond to

Elizabeth Hays

Identity Number 880419003908 3

Widow (as usufructuary) in terms of the will of the the late Peter Hays dated 18 April 2008

SIGNED AT _____ on _____

AS WITNESSES

1. _____

2. _____

QUESTION 7

7.1 Mary Blog and Steve Blog
In our capacity as parents and natural guardians of
Bennie Blog
Identity Number _____
Minor

7.2 Bennie Blog
Identity Number _____
Minor

Duly assisted by his parents and natural guardians
Mary Blog and Steve Blog

- 7.3
1. Jo Malema
Identity Number _____
Married, which marriage is governed by the laws of Kenya
Duly assisted by his spouse Patricia Malema as far as needs be

and
 2. Patricia Malema
Identity Number _____
Married which marriage is governed by the laws of Kenya
and duly assisted by her spouse, Jo Malema, as far as needs be

See CRC 5/94

7.4 Max Du Preez
Identity Number _____
Married in community of property to
Ethel du Preez

- 7.5
1. Mervin Naidoo
Identity Number _____
Married according to Muslim Rites

and
 2. Mavis Naidoo
Identity Number _____
Married according to Muslim Rites

May also be described as unmarried – see CRC 5/1994

- 7.6 Saul Peters in my capacity as executor in the estate of the late James Grant

duly authorised by Letters of Executorship No. _____ issued by the Master of the High Court, Pretoria, on 21 May 2009

And

Merle Grant

Identity Number _____

Widow, in her capacity as surviving spouse of the deceased to which she was married in community of property

- 7.7 Saul Peters in my capacity as executor in the estate of the late James Grant

No.

duly authorised by Letters of Executorship No. _____ issued by the Master of the High Court, Pretoria, on 21 May 2009.

QUESTION 8

- 8.1 Section 2 of Recognition of Customary Marriages Act No 120 of 1998

"(1) A marriage which is a valid marriage at customary law and existing at the commencement of this Act is for purposes recognized as a marriage;
(2) A customary marriage entered into after the commencement of this Act, which complies with the requirements of this Act, is for all purposes recognized as a marriage;
(3) If a person is a spouse in more than one customary marriage, all valid customary marriages entered into before the commencement of this Act are for all purposes recognised as marriages;
(4) If a person is a spouse in more than one customary marriage, all such marriages entered into after the commencement of this Act, which comply with the provisions of this Act, are for all purposes recognised as marriages."

8.2 Section 1 of Recognition of Customary Marriages Act No 120 of 1998

Customs and usages traditionally observed among the indigenous African people of South Africa and which form part of the culture of those people.

- 8.3 Section 3(1)(a) and (b) and 3(2) of Recognition of Customary Marriages Act No. 120 of 1998

(a) The prospective spouses:

1. Must both be above the age of 18 years
2. and must both consent to be married to each other under customary law.

- (b) and the marriage must be negotiated and entered into or celebrated in accordance with customary law.

Must also not be a party to a civil marriage

- 8.4 John Mabinda must make an application to the court to approve a written contract which will regulate the future matrimonial property system of his existing marriage and the prospective marriage. All parties with an interest must be cited and be parties to the application. If it is granted it must be noted by the Registrars of Deeds in all offices as an interdict against the parties.

Note to Examiner:

The order of court in terms of section 7(6) was found not be preemptory in terms of the Constitutional Court case of Mayelane v Ngwenyama and Another; 2013 (4) SA 415 (CC)

NB Examiners – Please use discretion when marking

- 8.5 SIPHISO NXUMALO
IDENTITY NUMBER 780902 5025 08 1
AND
NONAINDIA NXUMALO
IDENTITY NUMBER 800713 0078 08 1
MARRIED IN COMMUNITY OF PROPERTY TO ONE ANOTHER

- 8.6 1) SIPHISO NXUMALO
IDENTITY NUMBER 780902 5025 08 1
MARRIED OUT OF COMMUNITY OF PROPERTY
- 2) NONAINDIA NXUMALO
IDENTITY NUMBER 800713 0078 08 1
MARRIED OUT OF COMMUNITY OF PROPERTY

QUESTION 9

9.1

APPLICATION

Prepared by me

CONVEYANCER
WILLIAM HEFER

I, the undersigned,

_____, duly authorised hereto by a resolution of the directors of

XYZ PROPRIETARY LIMITED
REGISTRATION
NUMBER.1999/000798/07

hereby apply to the REGISTRAR OF DEEDS at PRETORIA, to issue in its name a Certificate of Consolidated Title in terms of Section 40 of the Deeds Registries Act No. 47 of 1937 in respect of the following properties:

1. ERF 4 BEST BUY TOWNSHIP
REGISTRATION DIVISION I.Q., PROVINCE OF GAUTENG
EXTENT 599 (FIVE HUNDRED AND NINETY-NINE)
SQUARE METRES
HELD BY DEED OF TRANSFER NO T 9090/2006
2. ERF 5 BEST BUY TOWNSHIP
REGISTRATION DIVISION I.Q., PROVINCE OF GAUTENG
EXTENT 1000 (THOUSAND) SQUARE METRES
HELD BY DEED OF TRANSFER NO T 9090/2006
3. ERF 6 BEST BUY TOWNSHIP
REGISTRATION DIVISION I.Q., PROVINCE OF GAUTENG
EXTENT 1000 (THOUSAND) SQUARE METRES

HELD BY DEED OF TRANSFER NO T 9090/2006

to be known hereafter as

ERF 55 BEST BUY TOWNSHIP
REGISTRATION DIVISION I.Q., PROVINCE OF GAUTENG

MEASURING: 2 599 (TWO THOUSAND FIVE HUNDRED AND NINETY-NINE)
SQUARE METRES

AS WILL MORE FULLY APPEAR FROM DIAGRAM S.G. NO. 5/2008

SIGNED at JOHANNESBURG on the
2010

day of

* AS WITNESSES:

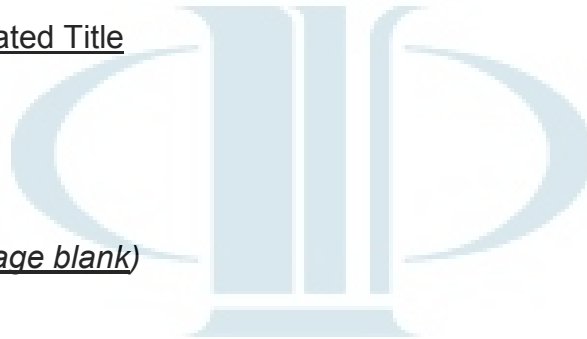
- 1.
- 2.

XYZ PROPRIETARY LIMITED

****Witnesses Optional***

Certificate of Consolidated Title

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Prepared by me
CONVEYANCER
Full Names

CERTIFICATE OF CONSOLIDATED TITLE

Issued under the provisions of Section 40 of the Deeds Registries Act No. 47 of 1937

WHEREAS:

XYZ PROPRIETARY LIMITED
REGISTRATION
NUMBER 1999/000798/07

has applied for the issue to the company of a Certificate of Consolidated Title under the provisions of Section forty of the Deeds Registries Act, 1937;

AND WHEREAS the applicant is the registered owner of:

1. ERF 4 BEST BUY TOWNSHIP
REGISTRATION DIVISION I.Q., PROVINCE OF GAUTENG HELD BY
DEED OF TRANSFER NOT 9090/2006
2. ERF 5 BEST BUY TOWNSHIP
REGISTRATION DIVISION I.Q., PROVINCE OF GAUTENG HELD BY
DEED OF TRANSFER NO T 9090/2006

3. ERF 6 BEST BUY TOWNSHIP
REGISTRATION DIVISION I.Q., PROVINCE OF GAUTENG HELD BY
DEED OF TRANSFER NOT 9090/2006

which have been consolidated into the land hereinafter described;

NOW THEREFORE, in pursuance of the provisions of the said Act, I, the REGISTRAR OF DEEDS at PRETORIA do hereby certify that the said

XYZ PROPRIETARY LIMITED
REGISTRATION NUMBER
1999/000798/07

its successors in title, or assigns, is the registered owner of

ERF 55 BEST BUY TOWNSHIP
REGISTRATION DIVISION I.Q., PROVINCE OF GAUTENG

MEASURING: 2 599 (TWO THOUSAND FIVE HUNDRED AND NINETY-NINE) SQUARE METRES

AS WILL MORE FULLY APPEAR FROM ANNEXED DIAGRAM S.G. NO. 5/2008

SUBJECT to the following conditions:

- A. Subject to the following conditions imposed by and enforceable by the Local Authority:
- (a) The erf is subject to a servitude two metres wide in favour of the local authority, for sewerage and other municipal purposes, along one only of its boundaries other than a street boundary as determined by the local authority.
 - (b) No building or other structure shall be erected within the aforesaid servitude area and no large rooted tree shall be planted within the area of such servitude or within two metres thereof.
- B. The property may not be transferred to any person who has not bound himself/herself to become a member of the Hubbly Bubbly Homeowners Association.
- C. The former Erf 4 Best Buy Township (indicated by the figure ABCDA on diagram S.G. No. 5/2008) is subject to the following conditions:
- (a) Subject to a right of way servitude in favour of Erf 9 Best Buy Township as will more fully appear from Notarial Deed of Servitude K11/2002S with diagram S.G. No. 1/2002 annexed thereto, which servitude area is now indicated by the figure abed on diagram S.G. No. 5/2008.
 - (b) Subject to a pipeline servitude in favour of Erf 9 Best Buy Township as will more fully appear from Notarial Deed of Servitude No K12/2001 with diagram SG No.2293/2001 relating thereto, which servitude area is now indicated by the figure klmn on diagram S.G. No. 5/2008.
- D. The former Erf 5 Best Buy Township (indicated by the figure EFGHE on diagram

S.G. No. 5/2008) is subject to the following conditions:

Subject to a right of way servitude for municipal purposes in favour of the Local Authority, which servitude area is now indicated by the figure rstu on diagram S.G. No. 5/2008.

- E. The former Erf 6 Best Buy Township (indicated by the figure JKLMJ on diagram S.G. No. 5/2008) is subject to the following conditions:

Subject to a garden servitude in favour of Erf 12 Best Buy Township as will more fully appear from Notarial Deed of Servitude K13/2002S with diagram S.G. No. 16/2002 annexed thereto, which servitude area is now indicated by the figure vwxy on diagram S.G. No. 5/2008.

AND SUBJECT FURTHER to such conditions as are mentioned or referred to in the aforesaid Deeds.

AND that by virtue of these presents the said XYZ PROPRIETARY LIMITED, its Successors in Title or Assigns now is and henceforth shall be entitled thereto conformably to local custom, the State however, reserving its rights.

IN WITNESS WHEREOF I, the said Registrar, have subscribed to these presents and have caused the Seal of Office to be affixed thereto.

THUS DONE AND EXECUTED at the Office of the REGISTRAR OF DEEDS at PRETORIA on

REGISTRAR OF DEEDS

*9.2.1 Mortgage bond B 4863/2006 is registered in the amount of R 1 220 000 registered over Erf 4, 5, and 6 Best Buy Township. The bond must be dealt with as prescribed in Section 40 of the Deeds Registries Act 47 of 1937.

*9.2.2 The bondholder must consent (Form MM) in terms of Section 40(3) of the Deeds Registries Act 47 of 1937 to the consolidation of the mortgaged erven and to the issue of a Certificate of Consolidated Title in respect of the consolidated property, subject to the operation of the bond, which mortgage bond will be subject to the conditions contained in the Certificate of Consolidated Title, especially the rights in favour of the Hubbly Bubbly Homeowners Association.

****Examiner must also allow the commensality conditions to be repeated under each component—candidates not to be penalised for same.***