

**CONVEYANCING PRACTICE
PART 1**

26 FEBRUARY 2020

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

A Developer shall not offer for sale or sell any unit in the building which is occupied by a lessee who was entitled to be notified in terms of section 4 (3)(a)(i) of the Sectional Titles Act 95 of 1986, to any person other than such Lessee, unless the Developer has by letter delivered either personally or by registered post, offered the unit for sale to the lessee and the lessee has refused the offer within a period of 90 days.

The lessee may refuse an offer within the specified period, or if at the end of the expiration of such applicable period not accepted the offer, the Developer shall not, within a period of 180 days from the date on which the lessee has refused the offer, or on which such applicable period has expired, as the case may be, offer for sale or sell the relevant unit to any person other than the lessee concerned at a price lower than the price at which it was offered for sale to the lessee, unless the Developer has again offered the unit at a lower price for sale to the Lessee and he has refused the offer within a period of 60 days from the date hereof, or has on the expiration of that period not accepted the offer.

The Lessor cannot require the Lessee to vacate the unit within the above time frames unless the Lessee has been guilty of non-payment of rent, or has inflicted material damage to the unit, or has been guilty of conduct which is a nuisance to occupiers of other units in the building concerned.

The Lessor cannot require the Lessee to pay an amount of rent higher than the amount which was payable by the Lessee during the notice period. Should the Lessor enter into any contract of Purchase and Sale agreement contrary to the provisions of Subsection (1) (2) or (4) of the Act, such agreement shall be void.

If the property in question is controlled premises under the provision of the Rent Control Act 80 of 1976, and the Lessee is 65 years old or older and his monthly income does not exceed the amount stipulated under the Rent Control Act, such unit may as long as such lessee continues to occupy the unit and his income does not exceed such maximum amount, only be offered for sale or sold to the lessee, subject to the provision that the lessee continues to occupy the unit for as long as his income does not exceed the maximum amount as stipulated under the Rent Control Act.

Should a developer contravene the provisions of the Act and proceed to sell a unit, he shall be guilty of an offence and liable on conviction to a fine not exceeding R2000,00 or to imprisonment for a period not exceeding twelve months or to both a fine and imprisonment.

Also note further the provisions of Section 10 of the Sectional Titles Act.

QUESTION 2

A UNIT CONSISTING OF

- a) Section No 25 as shown and more fully described on Sectional Plan SS 46/2009, in the scheme known as the Blue Diamond in respect of the land and building or buildings situate at Diamond No. 123, District Senekal, Province of the Free State of which section the floor area, according to the said Sectional Plan is 100 (one hundred) square metres in extent;
- 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 under Deed of Transfer No. ST

and subject to the conditions contained in Deed of Transfer No. ST

QUESTION 3

Foreigner: means an individual who is neither a citizen nor a resident, but is not an illegal foreigner.

Illegal foreigner: means a foreigner who is in the Republic in contravention of the Immigration Act 13 of 2002 and includes a prohibited person.

QUESTION 4

1. (a) Where a woman after her marriage, including a marriage according to the rites of the Islamic or any Indian religion or a customary union as defined in Section 35 of the Black Administration Act, 1927, assumes the surname of the man with whom she concluded such marriage or union or after having assumed his surname, resumes a surname which she bore at any prior time;
- (b) A married or divorced woman or a widow resumes a surname which she bore at any prior time;

2. At the request of any person the Director – General may, if he is satisfied that there is a good and sufficient reason for that person’s assumption of another surname, authorise the person to assume a surname other than his surname as included in the Population Register, and the Director – General shall include the substitutive surname in the population register in the prescribed manner, and may authorise a person to assume a surname other than that under which he obtained permanent residence in the Republic.

QUESTION 5

1. If no reservation was made by a Developer, the right to extend the scheme shall vest in the Body Corporate.
2. The Body Corporate would have to obtain a Certificate of Real right in respect of the reservation, provided that the Body Corporate shall only exercise or alienate or transfer such right with the written consent of all the members of the body corporate as well as the written consent of the mortgagee of each unit in the scheme (Section 25 (6)); provided further that a member or mortgagee shall not withhold such approval without good cause in law.
3. Regulation 14 - requires the consent of the owners and the bondholders to consent to the issue of the Certificate of Real Right.
4. The Body Corporate shall submit a draft sectional plan of extension to the Surveyor General for approval; accompanied by a revised schedule specifying the participation quota of each section in the building or buildings depicted on the sectional plan and the sectional plan of extension (Section 25 (8)).
5. The Body Corporate may after approval of the Sectional plan of extension by the Surveyor General, apply to the registrar for the registration of such plan of extension and the inclusion of the additional sections and exclusive use areas (if applicable), in the relevant sectional title register.
6. The application to reserve the right to extend the scheme shall be accompanied by:
 - a) 2 copies of the approved sectional title plan of extension.
 - b) Certificate of Real Right together with all the owners / bondholders consent to the issue of the Certificate and the exercise of the Right.
 - c) Certificates of registered sectional titles in favour of the body corporate in respect of each section and a certificate of real right in respect of the right to exclusive use areas (if depicted on the sectional plan).

Upon lodgement and satisfaction by the Deeds Office, the Registrar will register the sectional title plan of extension.

QUESTION 6

0.041666 share in
ERF 123 PATRYSPARK TOWNSHIP
REGISTRATION DIVISION L.S. LIMPOPO PROVINCE

IN EXTENT: 400 (FOUR HUNDRED) SQUARE METRES

Held by Deed of Transfer T789/1996

Regulation 30 of the Deeds Registries Act provides that if the denominator of the fraction (share) exceeds two figures, the fraction must be expressed as a six-figure decimal. The denominator of the fraction, in this instance 120, exceeds two figures.

QUESTION 7

Yes, he can.

He must obtain a disclaimer from his curator/trustee.

The disclaimer must state that they consent to the purchasing of the property and the passing of the bond,

That the property does not form part of the insolvent estate.

That the insolvent may deal with the property in the future without their consent.

QUESTION 8

Candidates must show a working knowledge of the following principles.

1. The supplier must not offer to supply or enter into an agreement to supply, any goods or service-
At a price that is unfair, unreasonable or unjust; or
On terms that are unfair, unreasonable or unjust.
2. The same applies in respect of marketing goods or service, or negotiate, enter or administer a transaction or an agreement for the supply of any goods or services, in a manner that is unfair, unreasonable or unjust;

Or

3. Require a consumer, or other person to whom any goods or services are supplied at the direction of the consumer-
To waive any rights
Assume any obligation
Waive any liability of the supplier
On terms that are unfair, unreasonable or unjust, or impose any such terms as a condition of entering into a transaction.

Section 48(2) provides certain guidelines to determine when an agreement or term is unfair.

QUESTION 9

See Section 14 of the Deed Registries Act - answers briefly.

Minor heir dying intestate without an executor;

Where transfer costs equal or exceed the value of the immovable property to be transferred in an estate; re-distribution of assets in the deceased estate;

Re-distribution of assets in a joint estate on divorce;

Re-distribution of property on dissolution of a partnership;

Termination of a fiduciary interest;

Claim in terms of a judgement or court order.

QUESTION 10

- 10.1 An application in terms of section 44 of the Deeds Registries Act requesting the endorsement of the title deed and for the substitution of the old diagram for the new diagram.
- 10.2 The application mentioned in 10.1:
- a) the title deed,
 - b) the new substituted diagram as approved by the Surveyor General,
 - c) the bondholder's consent to the endorsement of the title deed and for the substitution of the old diagram for the new diagram.

QUESTION 11

- 11.1 No, the Master of the High Court is authorised by the Administration of Estates Act, 1965 to approve a sale by the deceased during his life time before the estate account has been lodged for approval.
- 11.2 Yes, in terms of the Administration of Estates Act, 1965 a conveyancer must certify that the transfer is in accordance with the liquidation and distribution account - the conveyancer may therefor obviously not furnish such a certificate before the account has lain for inspection for the prescribed period free of objections.

QUESTION 12

No, a transfer duty receipt in respect of the donation of the property by Lethabo Dlamini to Grace Nkosi needs to be obtained and lodged.

QUESTION 13

Regulation 54(2) of the regulations to the Deeds Registries' Act read with RCR 37/2014 *Petrus Basson, Identity Number 700211 5007 087, Deceased.*

QUESTION 14

The Conveyancer will not be able to utilise the power of attorney to pass transfer. The death of X terminates the agency and a fresh power of attorney will have to be signed by the executor in X's estate once letters of executorship have been issued.

The position is different as regards the signed consent to cancellation. The debtor under the bond has already performed by repayment and the consent signed by X during his lifetime remains valid.

QUESTION 15

By a deed of transfer from the estate of X to Z, referring in the recital of such deed to the fact that Y had died. This procedure is provided for in Section 14(1)(iv) of Act 47/1977.

QUESTION 16

The following answers are all in terms of the Matrimonial Properties Act No. 88/1984

16.1 Yes, section 15(6) of Act 88/1984 applies.

16.2 Consent to the contract of suretyship must be in writing and may not be given by ratification (Section 15(2)(h)).

Consent to mortgage must be in writing and may not be given by ratification (Section 15(2)(a) read with Section 15(5)).

16.3 Yes, in terms of section 15(9)(a) the consent is deemed to have been given.

QUESTION 17

This is normally where a person is not certain whether to purchase in his name or in the name of another person or legal entity.

Since December 2003 the nominee must be appointed on the same day on which the agreement is concluded. If the nominee is not appointed on the same day, then these transactions will be regarded as two separate transactions. Double transfer duties will then be payable.

QUESTION 18

Jo Jackson
Identity Number

(now deceased)

And
Linda Jackson

Identity number.....

(formerly married in community of property to each other)

See regulation 54(2) AND section 17(1)(c)

QUESTION 19

19.1 An attorney may not establish a business relationship or conclude a single transaction with a client unless such attorney has -

- a) Established and verified the identity of the client
- b) If the client is acting as an agent on behalf of another person, establish and verify-
 - i) The identity of that other person; and
 - ii) The client's authority to establish the business relationship or to conclude the single transaction
- c) If another person is acting as an agent on behalf of the client, to establish and verify-

- i) The identity of that other person; and
- ii) The other person's authority to act on behalf of the client.

19.2 The following record must be kept in terms of section 22:

- a) The identity of the client or any agent acting on behalf of the client
- b) The manner in which the identity of the client was established
- c) The nature of the business relationship or transaction
- d) In case of a transaction-
The amount involved; and
The parties to the transaction
- e) All accounts that are involved in-
Transactions concluded in the course of that business relationship; and
That single transaction
- f) All documents or copies of documents obtained by the attorney in order to verify
any person's identity.

19.3 For a period of at least five years from the date on which the business relationship with a client has been terminated or from the date on which a transaction has been concluded.

QUESTION 20

Both A and B must sign the power of attorney to transfer. A as the bare dominium owner and B as the usufructuary. Transfer duty by A as the bare dominium owner and B as the usufructuary must be lodged. There is no need to cancel the usufructuary registered under K123/2016S.