CONVEYANCING PRACTICE
PART 1

7 APRIL 2021

ANSWERS

NOTE TO EXAMINER: ***This guideline records the views of the drafters. There may be justifiable variations in practice which are brought out in the answers. When this happens the examiner should apply his discretion in marking the answer.***

QUESTION 1 **[10]**

Because the seller is not a registered VAT vendor, he is not liable for any VAT. Transfer duty will be payable on the transaction. Transfer duty is a tax payable on the *acquisition* of property. The person acquiring the property, the purchaser, is responsible for payment of transfer duty.

A, the seller, will therefore pay neither VAT nor transfer duty. To minimise the transfer duty payable by the *purchaser*, it is best to structure the proposed transaction as ten separate transactions (i.e. have the parties sign a separate deed of sale in respect of each erf, with a purchase price of R 1 150 000 in each instance) rather than as one large transaction (one deed of sale with a single purchase price of R 11 500 000.)

This recommendation is based on the fact that the first R 1million of an acquisition of property in a transaction currently attracts transfer duty at **0%** (s 2 of the Transfer Duty Act 40 of 1949.) Utilise this exemption for each of the ten erven, rather than just once for a large transaction.

This is the difference:

If one transaction:

Total purchase price	R 11 500 000	
Less first R 1m dutiable at 0%	1 000 000	
	R 10 500 000	
Less R 375 000at 3%	375 000	R 11 250
	R 10 125 000	
Less R 550 000 at 6%	550 000	R 33 000
	R 9 575 000	
Less R 550 000 at 8%	550 000	R 44 000
	R 9 025 000	
Less R 8 525 000 at 11%	8 525 000	R 937 750
	R 500 000	
Less balance at 13%	R 500 000	R 65 000
Total duty payable on R 11 500 000:		**R 1 091 000**

If ten separate transactions:

Purchase price per transaction	R 1 150 000	
Less first R 1m dutiable at 0%	1 000 000	
	150 000	
Transfer duty at 3%	150 000	R 4 500
X 10 transactions		**R 45 000**

TRANSFER DUTY SAVING: R 1 046 000

QUESTION 2 [4]

In terms of s 56 DRA no transfer of mortgaged property will be allowed until the bond is cancelled or the relevant property (in this case, B's undivided share in the property) is released from under the operation of the bond.

To enable this, bond holder's consent to cancellation or release will be required. In practice a bond holder will only consent if the indebtedness under the bond is settled or the remaining owner assumes the indebtedness. The question indicates that *A will take over the joint indebtedness* under the bond.

One possibility is that, simultaneously with transfer of B's share to A, the existing bond by A and B could be cancelled, and a new bond by A (who will now own the property in full) could be registered. BUT this would result in conveyancing costs and deeds office fees relating to both the bond cancellation *and* registration of a new bond.

The question instructs us to deal with the bond *in the most cost effective* manner. This would take the form of the 'shortcut route' provided for in section 57 DRA, namely the ***substitution of debtor.***

Section 57 provides that if the owner of mortgaged land (except under a surety bond) transfers to another person the whole of the land mortgaged under a particular bond, and has not reserved any real right in such land, the registrar may register the transfer and may *substitute* the transferee for the transferor as debtor under the bond.

The written consent to substitution of the bondholder, and of A (the person who will now assume the departing owner's liability) must be lodged, together with the mortgage bond. This consent takes the form of a document titled 'consent to substitution' substantially in accordance with form W to the DRA regulations, and which document is signed by both the mortgagee and by A. Upon registration (which will take place simultaneously with the transfer of B to A) the Registrar will endorse the mortgage bond to the effect that A has been substituted for B.

(NOTE: in the example B's undivided share in the property will be transferred to A. This is not a transfer of 'the whole of the land' as is required in section 57. A will, however, after transfer *own the whole* of the land. In RCR 7 of 1994 it was ruled that s 57 can be applied where the whole of the share of a co-owner is transferred to another co-debtor. See the discussion in West *The Practitioner's Guide to Conveyancing & Notarial Practice 2020, LexisNexis,* p 387).

QUESTION 3 [2]

A cc may make not make a loan to one of its members (whether directly or indirectly, including in the form of a guarantee) unless the express prior written consent thereto of all the members of the cc have been obtained. (Section 52 of the Close Corporations Act 69 of 1984.)

QUESTION 4 **[2]**

A mortgage bond provides security to the bondholder (in the event of insolvency of the debtor, or attachment of the property) up to the maximum amount as specified in the bond.

A cost clause, or as it is also known, the "additional sum" is intended to provide security for any amounts which may become due by the debtor in addition to the 'capital sum' (which is generally the amount that the debtor has borrowed or for which he/she has been granted a facility.)

For example, a cost clause will cover expenses such as arrear rates and taxes, insurance premiums and attorneys' costs that may become due upon of the debtor's default under the loan.

QUESTION 5 **[5]**

5.1 Section 9 of the Transfer Duty Act 40 of 1949 sets out the transactions that are exempt from payment of transfer duty. Section 9(3) provides that:

No duty shall be payable in respect of the registration jointly in the names of partners of any property which is registered in the name of the partnership carried on by such partners.

No duty will therefore be payable the vesting of the property in the name of the individual partners (who will now hold the property as mere co-owners) on dissolution of the partnership. (3)

5.2 However, if upon dissolution of the partnership one of the partners takes a bigger undivided share in the property than what his share in the partnership was, then he would have 'acquired' property which will trigger transfer duty, and such an increase will attract transfer duty. He will have to pay transfer duty on the value of the 'extra' share that he has acquired. (2)

QUESTION 6 **[3]**

[NOTE: The Housing Development Schemes for Retired Persons Act 65 of 1988 applies where a 'housing interest' is alienated to a 'retired person'. Although the Act does not mention the words as such, the Act is applicable to retirement villages and other facilities intended for use by older persons. A retired person is defined as a person 50 years of age or older. A housing interest means either the right to claim transfer of the land (i.e. ownership), or the right to use or occupy that land. A right of occupation confers (on the retired person) the right to occupy the particular property for the duration of his or her lifetime. Because of the many risks involved in purchasing a right of occupation instead of purchasing the ownership in that property, the Act aims to protect the retired persons in a number of ways.

One of these ways are to restrict the developer's right to receive payment of the purchase price from a sale of a right of occupation.]

Before the developer may obtain payment of the purchase price (or even a deposit), he must ensure that the following has been complied with (see section 6 of the said Act): -

(a) an architect or a quantity surveyor must issue a certificate that the housing development scheme concerned has been

- erected substantially in accordance with any applicable officially approved building plans
- and town planning scheme and
- applicable local authority by-laws,
- and is sufficiently completed for the purposes of utilization of the housing interest concerned;

(b) a copy of that certificate and a copy of the contract must have been furnished to the purchaser concerned; and

(c) a conveyancer must have issued a certificate that the title deed of the land to which the right of occupation relates, has been endorsed as contemplated in section 4C of the Act, and that a copy of that certificate has been furnished to the purchaser concerned.

QUESTION 7 [10]

[NOTE: The answer to the question is found in regulation 13A of the Sectional Titles Act 95 of 1986. Because the 11(3)(b) schedule got lost while in the custody of the deeds registry (where it is permanently filed in the sectional title register) the deeds registry must bear the cost.]

1. In this question, it appears that the body corporate has not yet been established. It will therefore be the developer, that must apply as set out in regulation 13A(1) STA.

2. The registrar of deeds must, on Mr Reeve's written application, accompanied by a replacement schedule, arrange for the replacement schedule to be filed in the relevant sectional title file.

3. Before filing the replacement schedule in the relevant sectional title file, the Registrar must publish, at the expense of the deeds registry, a notice of the intention for a replacement schedule to be filed in the relevant sectional title file. This notice must be drafted in the prescribed form (form AN) and must be published in -

- two consecutive ordinary issues of the Government Gazette, and
- in two consecutive issues of a newspaper circulating in the area of jurisdiction of the deeds registry in which the scheme is registered.

4. A draft of the replacement schedule accompanying the application, must lie open for inspection in the deeds office for six weeks after the date of the first publication of the notice in the Gazette. This inspection e by any interested person must be free of charge. During these six weeks any interested person may object to the filing of the replacement schedule in the sectional title file.

5. If an objection is lodged by any person, and if that person and the applicant fail to come to an arrangement as to what the replacement schedule should contain, then the objector has one month in which he/she may apply to court for an order prohibiting the registrar from filing the replacement schedule. The court may make any order on the application it deems fit.

6. The replacement schedule must be as nearly as possible a reflection of the lost or destroyed schedule and shall take the place of the lost or destroyed schedule and

shall embody or refer to every condition, servitude, lease or other encumbrance which according to the records of the registry was embodied or referred to in the lost or destroyed schedule or in any endorsement thereon.

7. The replacement schedule must be endorsed with a deeds registry date endorsement upon the filing thereof in the relevant sectional title file.

8. If the original schedule is ever found and produced to the registrar, it will be endorsed thereon to state that it has become void.

QUESTION 8 [5]

[NOTE: Remember that after registration, the deeds office returns the original documents that were lodged and registered, to the conveyancer. The deeds office microfilms the documents. Note further that in practice that FICA documents must, in addition to the documents that are to be retained on file as provided for in the STA, also be kept on file.]

Regulation 40 of the regulations to the STA, read with Annexure 6 to the regulations, specifies the documents that must be kept on the file of the conveyancer who has prepared the documents, for six years.

For transfer of sectional title units (section 15B(1) STA):

- the original or duplicate of the conveyancer's s 15B(3) certificate;
- power of attorney to pass transfer
- levy clearance certificate issued by the body corporate.
- *"The conveyancer may keep any other documents relating to the status, authority or capacity of the transferor or the transferee deemed necessary by him in the file*."
- [Note: although not mandated by the Act, it would be prudent to also keep documents relating to the status, authority and capacity of the transferor, as well as consent ito s 15(2) of the Matrimonial Property Act.

[NOTE: The Act does not require the rates clearance by the municipality to be kept, and neither does it require that the transfer duty receipt be kept. In practice, however, most conveyancers keep the entire file for six years, after which it is destroyed.]

For transfers of mortgage bonds - 15B(1)(c) STA:

- power of attorney to register mortgage bond [if there is one; sometimes there is not, as the *mortgagor* may choose to execute the bond itself, rather than authorising an agent to do it on his behalf. This is possible, because the ST bond is executed before the conveyancer (a conventional bond is executed by the conveyancer, appearing before the Registrar. This is because the sectional title bond has a prescribed form, form Z, which differs from the structure of a conventional bond);

- All other documents, including powers of attorney, deemed necessary by the conveyancer and relating to the status, authority or capacity of the mortgagor or his or her agent or of the mortgagee or his or her agent or of the conveyancer;

- Any consent granted in terms of section (2) of the Matrimonial Property Act, 1984 (Act No. 88 of 1984).

QUESTION 9 **[5]**

Registrars Conference Resolution 15 of 2018, read with CRC 21/1990, applies.

[Background: When a person who owns property has divorced since acquiring that property and now wishes to dispose of the property, a certified copy of the divorce order and settlement agreement (if any) must be lodged, in order for the Registrar to make sure that the rights of third parties (particularly a former spouse) is not affected.]

It will not be sufficient for Ms Pendulum to merely lodge an affidavit stating that the settlement agreement is lost. The deeds office will insist on the settlement agreement being lodged.

If the settlement agreement cannot be found, then Ms Pendulum has two options:

- a new (reconstructed) settlement will have to be entered into by Ms Pendulum and her former spouse, and this new agreement will then be lodged together with the transfer documents;
- she will have to obtain an order of court authorising the particular transfer, and this court order will have to be lodged.

QUESTION 10 **[5]**

The seller transferred the property in April 2016. The title deed contained a condition that if the purchaser did not comply with the condition within three years (constructing a dwelling on the property to the value of at least R 3m), the property shall revert to the Seller, which effectively means that the Purchaser is obliged to retransfer the property to the Seller. The condition embodies a 'reversionary right.'

The Purchaser's obligation entailed building a dwelling on the property and which would have had to be completed by approximately April 2019. The failure of the Purchaser to do so amounts to breach and this triggered the reversionary right. In terms of prescription of the seller's right to claim retransfer, the 'clock starts ticking' in May 2019.

When will this right prescribe? If the right is a *real right*, then it is in the nature of a servitude and then the seller's right to enforce this right to claim retransfer will only prescribe in 30 years' time (see s 7 of the Prescription Act 68 of 1969). If the right is a *personal right*, then it amounts to a 'debt' and will prescribe in 3 years' time as provided for in the Prescription Act (see s 11(d)). **This would mean that the Seller's right to claim transfer will prescribe in approximately May 2022.**

The scenario described in the question is similar to the facts in a case that was decided before the Constitutional Court in 2018, namely *Ethekwini Municipality vs Mountahaven Pty Ltd* (CCT05/2018). The court found that:-

- the claim for a reversionary transfer was a 'debt' for purposes of prescription;
- that the nature of the right was *personal,* it was not a real right.

In the facts of that case the debt had already prescribed by the time the municipality tried to enforce it. [Note: with respect, the Court appears to have, in some respects, treated a *personal right* and a *personal servitude* as one and the same, while it is not.]

In the scenario posed in the question, in April 2021 I would therefore advise the Seller that he/she/it still has approximately one year within which to institute action. Best not to wait too

long, but rather to take the first steps immediately, namely to issue a letter of demand to the purchaser to effect retransfer to the Seller within a reasonable time, and for the Seller to tender a refund of the purchase price plus signature of transfer documents and payment of whatever transfer duty and costs may be due in terms of the original agreement with the purchaser. If the purchaser does not take steps to comply within, say, two or three months, then I would advise the Seller to apply to Court for an order authorising retransfer.

QUESTION 11 **[11]**

(a) No, the note will not result in a rejection.

- It means that the deeds office examiner wants to know whether a certain sequestration order issued in 2018 relates to the transferor.
- It is likely that the sequestration order related to someone with the same or similar name to the transferor, but does not contain an ID number, with the result that it is not clear which person with that name, it refers to.
- How to answer the note: Firstly: The conveyancer must double check with his/her client, and ensure that the client has signed an affidavit that he is not insolvent, and that any sequestration orders that exist, do not refer to him.
- If it transpires that it is indeed the client who is insolvent, transfer cannot proceed and the documents must be rejected.
- If the sequestration order does NOT relate to the client, the affidavit by the client, or a certificate by the conveyancer to the effect that the S2393/2018 does not apply to the transferor, must be lodged. (2)

(b) No, the note will not result in a rejection. The change in the last two digits is a result of the issue of a new identity book/card to the person since approximately 2000.
How to answer the note: The conveyancer must certify: *"The change in the last two digits of the Transferor's Identity number is the result of the issue of a new Identity Document. Please pass."*

[**Background:** A South African ID number has 13 digits. See for an explanation of the digits in ID numbers, the provisions of section 7 of the Identification Act 68 of 1997, read with regulation 3 of the regulations to the said Act.

Until the 1990's (1997, when the Identification Act came into force?) the 12th digit in the South African Identity number indicated the race of a person (the last digit, i.e. the 13th digit is a control figure determined by a computer). This is no longer the case.

Regulation 3 of the regulations under the Identity Act now indicate the following:

3. Identity number

The identity number referred to in section 7 shall consist of 13 digits, which shall be compiled as follows:

of which-

(a) the first six digits shall represent the date of birth of the person as follows: Digits 1 and 2, the year of birth; digits 3 and 4, the month of birth; and digits 5 and 6, the day of birth;

(b) digit 7 shall indicate the gender of the person, namely the serial numbers 0 to 4 which are allocated to female persons and serial numbers 5 to 9 which are allocated to male persons;

(c) digits 8 to 10, inclusive, shall represent a serial number;

(d) digit 11 shall represent the citizen of the person as follows:

SA Citizen	*Non-SA Citizen*
0	*1*

(e) digit 12 shall represent the index number 8, under which the person's particulars have been included in the population register provided that in cases where the unique number allocated by the computer automatically for each day of each year has been exhausted, the 12th digit would be number 9; and

[Para. (e) substituted by GN R275/2000][1]

(f) digit 13 shall be a control figure determined by the computer]. (2)

(c) This note will likely result in a rejection. The first two digits in the ID number related to the year of birth. At first glance it therefore appears as if the person who is now trying to mortgage the property, is not the same person as the one described in the print out as being the owner of the land.

Possible reasons for the discrepancy are:

- i) The conveyancer made a mistake and accidentally typed a wrong ID number for the mortgagor into the new power of attorney and draft mortgage bond (in which case the documents must be retyped, resigned and re-lodged);
- ii) The ID number as reflected in the printout was incorrectly copied by the deeds office' data capturing department from the owner's title deed when it was registered (in which case the error must be pointed out to, and corrected by the deeds office);
- iii) when the property was originally transferred to the person who is now the owner (and the mortgagor in your bond) the transferring attorney made a typing error and inserted the wrong ID number (in which case an application in terms of section 4(1)(b) to rectify the error, must be lodged);
- iv) The person trying to mortgage the property is not the owner of the land, in which case registration of the mortgage bond cannot proceed. (3)

(d) The note will result in a rejection. An interdict has been noted against the property as the result of an attachment of the property by the Sheriff under an order of Court. The mortgage bond can only be registered if the Sheriff can be persuaded to lift the attachment (usually if agreement can be reached for payment, between the owner of the property and the relevant creditor). (2)

11.2 Yes. In all the cases the notes could have been anticipated, thereby saving clients the cost and frustration of delay, and saving the conveyancer the risk of being sued for damage as a result of losses by the client.

The notes could have been anticipated by, immediately upon receipt of instruction, obtaining deeds office printouts. Deeds office printouts must be obtained in respect of the property as well as in respect of the transferor/mortgagor and transferee /

[1] Reg 3 has been copied from SABINET Online Legislation

mortgagee. These printouts must not only be obtained, they must be *studied* and compared with the information with the information obtained from the client. In the case of a), the solvency affidavit would be lodged to pre-empt the note. In the case of b) a conveyancer's certificate to the effect stated, would be lodged to pre-empt the note. In c) the documents would have been thoroughly checked before lodgement to prevent errors, or a s 4(1)(b) application would have been lodged simultaneously, as the case may be. (2)

QUESTION 12 [12]

[Background: The common law prohibits a person to act as agent for a company that does not yet exist. A need exists in modern commercial transactions to do exactly that. Section 21 of the Companies Act 71 of 2008 deals with pre-incorporation contracts and the requirements for their validity, before acceptance.

In terms of s21 it is permitted that a person may enter into a contract on behalf of a company that has not yet been formed. The only formality (unlike in the 'old' Act, which also required it to be incorporated in the company's founding document) is that the pre-incorporation agreement must be in writing. After incorporation of the company the agreement must be ratified or rejected by resolution of the Board. If the Board fails to do so within 3 months of incorporation, the company is deemed to have accepted (ratified) the contract and is then bound thereby.]

12.1.1 Documents relating to the company which will be called for:

- The contract that was signed 'pre' the incorporation of the company (the deed of sale, signed by Mr Mtshali on behalf of the company to be formed (as purchaser) and by the seller, Mr Mabasu;
- Memorandum of Incorporation of the company;
- Certificate of Incorporation;
- If it exists, a certified copy of the resolution by the Board of Directors (or of the relevant extract of minutes), ratifying the said deed of sale signed by Mr Mabasu.
- If no such resolution exists, proof that the company is aware of the existence of the pre-incorporation agreement (affidavit by a director, or certificate by the auditor).

(4)

12.1.2 Requirements in law:

- The contract must be in writing (s 21 requires it). Also check the date to ensure it does indeed pre-date the incorporation of the company;
- The contract, being an alienation of immovable property, must be signed by the parties, as is required by s 2 of the Alienation of Land Act;
- The Board must pass a resolution *within 3 months* after the company's incorporation, ratifying or rejecting the contract (completely, partially, or conditionally);
- If no resolution was passed, the company is deemed to have ratified the contract.

(3)

12.1.3 If the contract is not in writing (implied in the wording of s21(1)) and signed by the parties (s 2 ALA) the transaction will be invalid and the company will accordingly not be bound thereby. NOTE: It is NOT a requirement for validity that the company passes a resolution to ratify. See last bullet point above. (2)

12.2 Yes. The current drafting leaves the seller vulnerable, as no time limit for formation is specified, and no provision is made to hold Mr Mtshali or another person personally liable as the purchaser in the event that the company is not formed, or if it rejects the contract after its formation.

Recommended clauses to be inserted:

- The agent, Mr Mtshali, must undertake/warrant that the company shall be formed within a specific period, for example 30 days;

- Mr Mtshali must warrant that

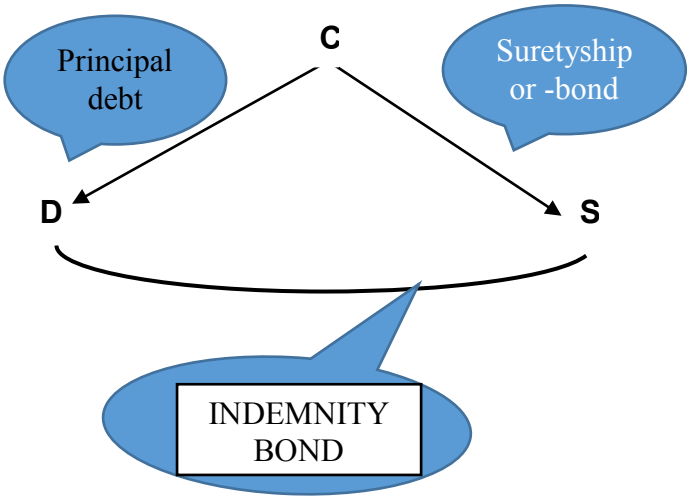
    - the company shall indeed be formed
    - that the company shall ratify the contract, and
    - that after formation he or someone else (who must be named and also sign the contract) will be personally liable jointly and severally with the company;
    - or if the company is not formed within the stipulated period, Mr Mtshali (or that someone else) shall be personally liable as the purchaser;
    - or if the company is duly formed but rejects the contract, or only ratifies it partially, or conditionally, then Mr Mtshali (or that someone else) shall be personally liable as the purchaser under the contract.

(3)

QUESTION 13 **[8]**

13.1 Indemnity bond:
An indemnity mortgage bond provides protection (like insurance) to the *mortgagee*, in the event that said mortgagee is held liable towards a third party (in terms of some agreement) for the debt/obligation of the *mortgagor* towards that third party, and which mortgagor defaults on his debt/obligation towards the third party.

This is best explained by means of an example: C= the creditor, D=the debtor and S = person who signed a suretyship/surety bond in favour of C, as security for D's debt or other obligation towards C. S is worried that D could default on his debt towards C, in which event C will call on S as the surety to make good D's debt, in which case S will be out of pocket and will run the risk of recovering nothing from D if D 'runs away' or becomes insolvent. Therefore, S demands that D registers a mortgage bond over D's property in favour of S, so as to *indemnify* S in the event that S has to pay up to C.
A visual portrayal:



(2)

13.2 Collateral bond:

Bond by the SAME DEBTOR, SAME CREDITOR, for the SAME DEBT, over other property of the debtor. If C has passed a mortgage bond over Erf 1 belonging to D as security for a debt, and later on C requires additional security *from D* (i.e. not from another person as surety), and D passes a mortgage bond over his other property Erf 2 as additional security *for the same existing deb*t, then the bond over property 2 is a *collateral bond.* (2)

13.3 Covering bond

There is no legal definition of the term 'covering bond'. It is generally used in the industry to describe a bond which in whole or in part 'covers' (serves as security for) *future* debt, as opposed to serving only as security for *existing* debt. The reason for the distinction is that, in the case of *existing debt* the debt is at some point finally extinguished (rendering the bond of no further effect) while *future* debt does not even exist at time of mortgage, and once it does, could vary in amount owing from time to time (fluctuate). Even when the amount owing is temporarily NIL, the bond continues to 'cover' the indebtedness which may again arise in future.

[An example: D has a business that imports fruit from Europe. He has placed a large order for oranges from Spain, to be delivered, if there is a sufficient harvest, during the next season. He knows that he will need to pay approximately R 1m within 12 hours of the shipment arriving. D does not have that sort of cash. C is prepared to lend him the money when the time comes. Due to the foreseen short notice for potential payment, they agree that D will now pass a mortgage bond in favour of C to serve as security for any future loan that C may make for the said purposes.

Such a bond (a maximum amount must be specified in the bond) will be a 'covering bond', covering any future indebtedness arising from the causa described in the bond. The term 'continuing covering bond' is also sometimes used, and usually refers to overdraft facilities granted by a bank. The term implies that it will continue to serve as cover (security) even when the amount fluctuates. It will not be unusual in the ordinary course of business if on one particular day NIL is owing, and the next day the maximum amount of the overdraft could be owing. (2)

13.4 Participation mortgage bond

A number of investors who have cash on hand decide to pool their funds and then lend the money out to borrowers on security of mortgage bonds. (The bonds could be anything from 'principal' or 'surety' or 'collateral' or 'covering' bonds, and so forth).
In this way the investors get a better return than by merely investing their money in a bank, and the nature of the investment (returns being in the form of interest earned and loans being secured by mortgage bond) is somewhat less risky than investing in the stock market).

These investors are said to 'participate' in a collective investment scheme. To protect investors, all collective schemes (including participation bond schemes, *stokvels* and others) are regulated in terms of the Collective Investment Schemes Control Act 45 of 2002. Amongst other provisions, this Act provides that a Manager (meeting certain requirements) shall be appointed for such a scheme, and that all bonds shall be registered in the name of a Nominee company set up for the purpose, but the bonds shall be deemed to be in favour of the participants themselves. (2)

QUESTION 14 **[8]**

14.1 I would write the name and details of the commissioner of oaths onto the power, underneath the correspondent's signature. No further witness required.

[In terms of section 95 of the Deeds Registries Act, a power of attorney must be signed by *two* competent witnesses *or* by a justice of the peace, notary or by a commissioner of oaths. (It is assumed that the correspondent is an attorney or conveyancer and is therefore an ex officio commissioner.]

[May the preparer sign the power of attorney as a witness? Yes, provided he/she signs in the capacity as a commissioner of oaths. Note that, in terms of s 95 the conveyancer who is appointed as the appearer (to execute the deed of transfer before the Registrar) may NOT sign as a witness]. (2)

14.2 The first question to ask is: *is the correcting of the small typing error in the extent (it should read 1200 square metres and not 1206 square metres) a* material *alteration*? The error will be regarded as material if it is the *remainder* (as opposed to a portion, or a full erf or farm) that is being transferred. In other cases, (where it is easy to see what the correct extent is by merely having reference to the property clause in the existing deed of transfer) correction of this small discrepancy is not regarded as a material alteration.

If it is a material alteration, the power of attorney will have to be returned to the correspondent for full initialing by the transferor and the witnesses that attested his signature, and initialing by the preparer. If it is NOT a material alteration, the Registrar will be happy to accept a certificate on the power of attorney made by the *executing* conveyancer (me, in the example) confirming the correct extent.

[The authority for what is stated above:

In terms of regulation 20(4) DRA "*any material alterations to or interlineations in a document shall be authenticated by the initials of the person signing the document and by the person attesting his signature*"

In addition, thereto (and not in lieu thereof) regulation 44(2) DRA determines that "*any material alteration or interlineation in any power of attorney... shall be initialled by the attorney, notary or conveyancer who prepared* (i.e., the conveyancer or attorney who have signed the prep clause thereon) *such document*."

See further RCR 15/1988 and RCR 10/2004 for confirmation that all the parties, namely the transferor, witness and preparer need to initial material amendments on a power of attorney.]

See for a general discussion and for the statement that the transfer of the remainder resulting in the alteration is a material one: West, *The Practitioner's Guide to Conveyancing & Notarial Practice 2020, LexisNexis,* p 88-89.] (2)

14.3 An error in a title deed description is not regarded as material and the Registrar will accept a certificate by the executing conveyancer (me) certifying as to the correct title deed number (see West, *The Practitioner's Guide to Conveyancing & Notarial Practice 2020, LexisNexis,* p 88-89). (2)

14.4 This is a material error, and the power of attorney will be returned to the correspondent for correction (preferably retyping of the page) and full initialing of the page by the transferor, the witnesses who attested the power of attorney (or, if they are not available, two other witnesses, who must then also sign their full signatures) as required in regulation 20(4) to the regulations DRA. (2)

QUESTION 15 [2]

A 'use agreement' is defined in section 1 of the Share Blocks Control Act 59 of 1980 as

> "*any agreement conferring a right to or an interest in the use of any immovable property in respect of which a share block scheme is operated*".

[Note: A shareholder in a share block scheme has the right to exclusively use (as if he were the owner) a designated part of the property in a share block scheme (for example, apartment no 6 in the building comprising 12 apartments). The source of this right is: -

- his shareholding of a block of shares in the company (e.g. shares no. 1 to 10); coupled with-
- the signed use agreement between the shareholder and the company, describing the designated part of the property, and the nature and extent of the rights of use. It is typically unlimited in terms of time, and may be transferred to successors in title.]

QUESTION 16 [8]

16.1 Conversion cc to co
- Application in terms of s 3(1)(v) DRA for noting the conversion of a CC to a company
- proof of the conversion from CIPC (a form titled 'CoR18.3); (2)

16.2 Dissolution of partnership
- An application for endorsement in terms of section 24bis(2) DRA
- proof of dissolution of the partnership (e.g. an agreement, or death certificate of a partner)
- if the property is mortgaged, consent by mortgagee to the substitution of individual partners as debtors under the bond. (2)

16.3 New ID
- A conveyancer's certificate certifying that the identity number of the transferor / mortgagor Moira Peterson has changed as a result of her obtaining a new Identity book. (** Plus certified copy of the first page of her ID?) (2)

16.4 Error in description of transferor/mortgagor
- Title deed with the wrong description;
- Application in the form of an affidavit by David Smith in terms of s 4(1)(b) to correct the error;
- If proof in addition to the affidavit is required by the Registrar, then also a certified copy if David Smith's ID (to confirm the correct position)
- The consent of any person that appears from the deed to have an interest in the rectification (the bondholder, if there is a bond; perhaps the holder of a servitude or like real right, if there are any). (2)

TOTAL: [100]