

THE REPUBLIC OF SOUTH AFRICA

CONVEYANCING EXAMINATION

PART 1

7 APRIL 2021

2 Hours

09:00 - 11:15

Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answerbook during this period. The examination of 2 hours then follows.

PLEASE NOTE:

1. Please write the number allocated to you on the cover of your answer book.
2. Candidates **must** write legibly and neatly. What may appear to a candidate (being accustomed to his own handwriting) to be legible, may **not** be legible to the examiners who cannot be expected to guess what has been written, nor would it be correct or fair (to other candidates) to expect the examiners to do so. If a candidate's handwriting is not **clearly** legible to the examiners, the candidate runs the risk of losing many marks. **ANSWERS MUST BE WRITTEN ONLY IN INK OR WITH A BALLPOINT PEN.**
3. Please use only **one** side of each page.
4. As many of the questions are based on sections and/or regulations of the relevant Acts, the answers thereto will obviously be either correct or incorrect.
5. Except if a special reason exists, a candidate will not be required to do an oral if 50% aggregate or more is attained. If a candidate achieves an aggregate of between 40% and 49% he/she will have failed the examination and will be required to do an oral in order to convince the examiners that he/she does have sufficient knowledge to pass the exam. Candidates who attain less than 40% will not qualify for an oral and will have failed this examination.

TOTAL MARKS: [100]

QUESTION 1**[10]**

Your client, A, owns 10 vacant erven which he wishes to sell at R1 150 000,00 (one million one hundred and fifty thousand rand) each. He is not a vendor. BB, a company and registered vat vendor, approaches A and offers to buy all 10 erven for R11 500 000,00 (eleven million five hundred thousand rand). BB intends erecting dwellings on the erven and to sell the properties thereafter.

You are instructed to draw a deed of sale and to attend to the registration of the transfer. Discuss how you will go about the matter with reference to the transfer duty or VAT payable, if any. Your instructions are to save the purchaser as much as possible regarding transfer duty and/or VAT on the transaction. Motivate your answer fully.

QUESTION 2**[4]**

A and B are the joint registered owners of a commercial property, which is subject to an existing mortgage bond in favour of a financial institution for R1 400 000,00. They are joint mortgagors.

A has purchased B's undivided half share in the property and it has been agreed that, as part of the purchase price, A will take over, for his sole account, the present joint indebtedness under the bond.

Explain carefully how, in the most cost effective manner, you would deal with the bond in these circumstances.

QUESTION 3**[2]**

In what circumstances may a Close Corporation make a loan to one of its members?

QUESTION 4**[2]**

What is the relevance of a "Costs Clause" or "Additional Amount" in a mortgage bond?

QUESTION 5**[5]**

5.1 Immovable property is registered in the name of a partnership. On dissolution of the partnership the title is endorsed in terms of Section 24(bis)(2) of the Deeds Registries Act.

What transfer duty is payable, if any? Discuss. (3)

5.2 Will it make any difference to your answer if on dissolution one partner takes a bigger share than what he held during the partnership? Motivate your answer. (2)

QUESTION 6**[3]**

The Montrose Lodge, a retreat for the elderly, decide to develop 20 units, the occupancy of which is to be sold to purchasers who qualify to occupy same. The purchasers enter into a contract with the developers. List the 3 (three) requirements with which the developer must comply before he may obtain payment.

QUESTION 7**[10]**

Your client and developer, Mr Roelof Reeve, with your assistance as conveyancer, opened a sectional title register. The original Section 11(3)(b) schedule of conditions, as its practice, is not delivered back to you as the conveyancer and you are advised by the Deeds Office that the Section 11(3)(b) schedule of conditions has been lost or destroyed and is not available in its records.

Describe fully the procedure to remedy the situation.

QUESTION 8**[5]**

List any 5 (five) documents that must be kept on the conveyancer's file for a period of at least 6 (six) years in respect of registration sectional title transfers and mortgage bonds. You may not guess and will be penalised should you list unnecessary documents.

QUESTION 9**[5]**

You are approached by Ms Pendulum, who instructs you to transfer a property as a result of a divorce order of court and settlement agreement which formed part of the order. You discover that the original settlement agreement is lost as well as the Court's copy thereof. Explain how you will go about to effect transfer of the said property to Ms Pendulum.

QUESTION 10**[5]**

You are approached by the Seller on the date of this exam, who instructs you that she sold a property to the Purchaser on the 15th January 2016. Three months later, the property was transferred to the Purchaser. There was a condition in the deed of sale, which was carried into the title deed to the effect that Purchaser will build a dwelling on the property to the value of at least R3 million within three years from date of transfer, failing which the property shall revert to the Seller. The Seller requests you to assist her in enforcing her rights due to the failure of the Purchaser to fulfil the condition. Discuss the Seller's rights.

QUESTION 11**[11]**

11.1 The following are sample notes which may be raised against deeds lodged in the Deeds Registry. In each case indicate firstly what is the meaning of the note, secondly whether the note in question will result in rejection of the deed and thirdly indicate how you would overcome the note.

- (a) Does S2393/2018 apply? (2)
- (b) Identity number of Transferor is not the same as the number in computer print-out (**last two** digits differ). (2)
- (c) Identity number of Mortgagor is not the same as the number in computer print-out (**first two** digits differ). (3)
- (d) 1113/2018 AT applies. (2)
- 11.2 In all the cases mentioned in 11.1 above, would it have been possible to anticipate the notes (thereby enabling you to take the action mentioned in your answers to 11.1 above prior to lodgment, and so avoid possible rejection and, if so, what would you have done in order to anticipate the notes? (2)

QUESTION 12

[12]

- 12.1 Your client, John Mabusu, has sold Erf 919 Eshowe and in the deed of sale (which was not prepared by you) the purchaser is described as "**David Mtshali in his capacity as trustee for a company to be formed**" and there is no provision in the contract for David Mtshali to be personally bound in the event of the company not being formed. The company was in fact formed three weeks after the date of sale.
- 12.1.1 List the documents relating to the company which you, as conveyancer, would call for in order to satisfy yourself that a binding contract exists in terms of which you may procure registration of transfer. (4)
- 12.1.2 If, having regard to this particular matter, there are any special requirements of law in relation to any of those documents, specify those requirements. (3)
- 12.1.3 In the circumstances of this transaction, is there any special requirement of law which, if not met, will invalidate the transaction? (2)
- 12.2 If you had prepared the deed of sale, would you have inserted any special provisions in order to protect the seller and/or in order to provide greater flexibility in the formation of the company? If your answer is in the affirmative, you are not required to draft any specific clauses, but merely to indicate briefly what those provisions would be. (3)

QUESTION 13

[8]

Give a brief resume as to what the following bonds entail:

- 13.1 Indemnity bond; (2)
- 13.2 Collateral bond; (2)
- 13.3 Covering bond; (2)
- 13.4 Participation bond. (2)

QUESTION 14**[8]**

You practise at the seat of a Deeds Registry and receive instructions from your correspondent in the country to attend to various conveyancing matters. What will you do in the following circumstances in order to avoid any unnecessary delay?

- 14.1 The correspondent has signed the preparing note of a power of attorney to pass transfer. Only one witness has signed. You note that the signature of the witness is the signature of your correspondent. (2)
- 14.2 In a power of attorney to pass transfer, you note that the extent of the property is incorrectly reflected as 1 206 square meters instead of 1 200 square meters. (2)
- 14.3 The reference to the title deed in the power of attorney is incorrectly reflected as T500/2006 instead of T500/1996. (2)
- 14.4 In the power of attorney to pass transfer, you note that the transferor's identity number differs substantially from that in the title deed which is correct. (2)

QUESTION 15**[2]**

What is a use agreement in terms of the Share Blocks Control Act 59 of 1980?

QUESTION 16**[8]**

You are requested to attend to the changes of names and status in the following instances. What documents will you lodge? Do not draft any documents.

- 16.1 Kim Brothers (CC) is converted to Kim Brothers (Pty) Ltd. (2)
- 16.2 Peter Smith, John Smith and Arthur Black, trading in partnership, dissolve the partnership and each of the partners wishes to retain his share in the immovable property registered in the name of the partnership. (2)
- 16.3 Moira Peterson's identity number has changed as a result of her obtaining a new identity document. (2)
- 16.4 David Smith's surname is incorrectly given as Smit in his title deed. No other deed or document is incorrectly registered in his name in the Deeds Registry. (2)

- THE END -
