

**CONVEYANCING PRACTICE
PART 2**

18 NOVEMBER 2020

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 development. 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.

Descriptions of parties, properties and extending clauses are extremely important as the Deeds Offices do not allow any deviations and accuracy is thus extremely important.

QUESTION 1

Guarantees should contain the following information:

- In whose favour and account number/s?
- For which amount?
- What is the rate of interest?
- On which amount is the interest to be calculated?
- From which date is interest payable?
- Where should it be payable?
- Which transactions should be registered?
- On whose advice should the guarantee be paid out?

QUESTION 2

*2.1.

- a) In favour of XYZ Bank Limited for the sum of R190,050.00 (one hundred and ninety thousand and fifty Rand) together with interest on R190,000.00 (one hundred and ninety thousand rand) at 10% per annum calculated from 1 November 2020 to date of payment, both dates included.
- b) In favour of Speed Bank for the sum of R160,000.00 (one hundred and sixty thousand Rand) plus interest thereon calculated quarterly in advance at the rate of 12% per

annum as from 1 October 2020 till the last day of the month, of the quarter in which cancellation of the bond is registered.

- c) In favour of Rex Harrison for the sum of R130,000.00 (one hundred and thirty thousand Rand).
- d) In favour of _____ attorneys, for credit account John Andrews for the sum of R719,950.00 (seven hundred and nineteen thousand nine hundred and fifty Rand) less interest as set out in (a) and less interest as set out in (b).

*marker, please take cognizance of the typo in the Afrikaans paper.

2.2

- a) Registration of transfer of Erf 500 Palala from John Andres to Stephan Jackson
- b) Cancellation of all existing mortgage bonds registered over Erf 500 Palala,
- c) Registration of the first mortgage bond for R1 200,000.00 over Erf 500 Palala by Stephan Jackson in favour of ABC Bank Limited.

QUESTION 3

3.1

Prepared by me

CONVEYANCER

AARON BURR (LPCM: 123)

POWER OF ATTORNEY TO PASS TRANSFER

We, the undersigned,*

- 1. Paul Rush
in my capacity as trustee and duly authorized thereto by virtue of letter of appointment No 3265/2015 issued by the Master of the High Court at Pretoria on 18 November 2020 in the insolvent estate of DONALD DUCK
IDENTITY NUMBER 721201 5631 08 7
MARRIED OUT OF COMMUNITY OF PROPERTY

and

- 2. DAISY DUCK
IDENTITY NUMBER 760101 0056 08 8
MARRIED OUT OF COMMUNITY OF PROPERTY

do hereby appoint AARON BURR (123) with power of substitution to be my lawful attorney and agent to appear before the Registrar of Deeds at Pretoria and there to declare that we did on 10 December 2020 sell for the sum of R2 500 000.00 (two million five hundred thousand rand) to:

BARGAIN PROPERTIES (PTY) LTD
REGISTRATION NUMBER 2006/123456/07

the following property, namely:

ERF 123 HILLCREST TOWNSHIP
REGSITRATION DIVISION JR, PROVINCE: GAUTENG
IN EXTENT 4200 (FOUR THOUSAND TWO HUNDRED) SQUARE METRES
HELD BY DEED OF TRANSFER T1234/2000

SIGNED at Pretoria on this the 13th day of December 2020.

As witnesses:

1. _____

2. _____

*See RCR 46 of 2009

Note that the question is not clear as to whether the trustee has released the property of the solvent spouse from the insolvent estate or not. The question has been answered on the assumption that the property of the solvent spouse which also vests in the trustee of the insolvent estate, has been released by the trustee.

If the trustee has not released the property, the transferor in the power of attorney will only be the trustee. The description of the transferor in such an instance would read as follows:

I, the undersigned,

Paul Rush

in my capacity as trustee and duly authorized thereto by virtue of letter of appointment No 3265/2015 issued by the Master of the High Court at Pretoria on 18 November 2020 in the insolvent estate of

DONALD DUCK

IDENTITY NUMBER 721201 5631 08 7

MARRIED OUT OF COMMUNITY OF PROPERTY

and acting in terms of Section 21(3) of the Insolvency Act 24 of 1936 in the solvent estate of

DAISY DUCK

IDENTITY NUMBER 760101 0056 08 8

MARRIED OUT OF COMMUNITY OF PROPERTY

The cause in such event would read as follows:

"...the trustee in the insolvent estate of Donald Duck and acting in terms of section 21(3) of the Insolvency Act 24 of 1936 in the solvent estate of Daisy Duck has truly and legally on 10 December 2020 sold the undermentioned property to the undermentioned transferee for the amount of R2 500 000 (two million five hundred thousand rand.)"

3.2 Transactions:

1. Transfer;
2. Bond cancellation: (if trustee has released the solvent spouse)
3. Bond:

Documents:

Draft deed of transfer
Power of attorney to pass transfer
Existing title deed
Transfer duty receipt
Rates clearance certificate

*Where the trustee has released the solvent spouse, the bond must be lodged for disposal.

3.3

TRANSFER DUTY PAYABLE ON R2 500 000 (as at date of examination)

The first R1 000 000.00 is exempt from the payment of transfer duty.

1 000 001 – 1 375 000	3% of the value above R1 000 000
1 375 001 – 1 925 000	R11 250 + 6% of the value above R 1 375 000
1 925 001 – 2 475 000	R44 250 + 8% of the value above R 1 925 000
2 475 001 – 11 000 000	R88 250 +11% of the value above R2 475 000
11 000 001 and above	R1 026 000 + 13% of the value exceeding R11 000 000

Transfer duty will be calculated as follows

R2 500 000 minus R2 475 000 = R25 000 x 11% = R2750 + R88 250 = **R91 000.**

QUESTION 4

- 4.1 Yes – see section 43(1)
- 4.2 No – see CRC 28 of 2013
- 4.3 Yes – see section 65(3) and 76
- 4.4 Yes – see section 4(1)(b)(i)
- 4.5 No
- 4.6 Yes – see section 56(1)(b)

- 4.7 No – see section 56
- 4.8 No – see section 56
- 4.9 No, the mortgagee must state that it's not in its possession – see reg 68(2).

QUESTION 5

5.1 “do hereby consent to the consolidation of
Erf 19 Barkly West Township
Registration Division JR, Province Gauteng

and

Erf 20 Barkly West Township
Registration Division JR, Province Gauteng

to be known as:

Erf 51 Barkly West Township
Registration Division JR, Province Gauteng
Measuring: 2500 (two thousand five hundred) square metres

as will more fully appear from consolidated diagram SG no AND TO THE
substitution of the consolidated property for the property presently hypothecated under
the said bond”

5.2 “do hereby consent to the registration of servitude to convey electricity over the
property mortgaged under the said bond, which servitude is more fully set out in the
Notarial Deed executed on 14 September 2020 attached hereto as annexure A, free
from the bond”

5.3 “do hereby consent to:

- (1) the opening of the Township Register in respect of the property mortgaged
under the said bond and to be known as the Township of Barkly West; and
- (2) the registration of the general plan S.G.”

5.4 “(a) do hereby consent for the release of
Portion 8 of Erf 51 Barkly West Township
Registration Division JR, Province Gauteng
Measuring: 700 (seven hundred) square metres
from the operation of the bond”

- (b) do hereby consent to the issue of a certificate of Registered Title in terms of
Section 43 of the Deeds Registries Act no 47 of 1937 in respect of the following
property, namely:
Portion 3 of Erf 51 Barkly West Township
Registration Division JR, Province Gauteng
Measuring: 800 (eight hundred) square metres”

5.5

“do hereby consent to:

1. The opening of Sectional Title register in terms of the provisions of section 12(1)(b) of the Sectional Titles Act 95 of 1986.
2. The endorsement of the said mortgage bond by virtue of the provisions of section 11(3)(d) to the effect that it attaches to:
 - a. the sections and common property shown on the sectional plan;
 - b. *the certificate of real right in respect of the right of exclusive use as contemplated in section 27(1); and
3. Registration of the sectional plan by virtue of the provisions of section 12(1)(a) of the said Act in respect of the scheme known as (*state the name of scheme*) situate at (*state full property description and title deed number*)
4. The issuing of Certificates of Registered Sectional Title by virtue of section 12(1)(d) of the said Act in respect of the sections indicated on the section plan.”

QUESTION 6

6.1

Prepared by me

CONVEYANCER

AARON BURR (LPCM: 123)

Application under section 11(1) of the Sectional Titles Act, 1986

We, the undersigned:

1. Peter Khumalo
Identity number: 631024 5094 089
married in community of property to Esther Khumalo
2. Peter Nkosi
Identity number: 6112315040089
Married, which matrimonial property system is governed by customary law in terms of the Recognition of Customary Marriages Act No. 120 of 1998 (if polygamous) married in community of property to Leandri Nkosi (if monogamous) (see CRC 27/2013)
3. Ben Bengu
Identity number: 5712125040089
married in community of property to each other to Mary Bengu
and
Ben Bengu
Identity number: 5712125040089
married in terms of customary law

4. Lesley Smith
Identity number: 9501010015089
a partner in a civil partnership with Sarel Vermaak
in community of property and registered in terms of the Civil Union Act 17 of 2006
carrying on business in partnership under the name of Get Going Partnership.

hereby apply to the Registrar of Deeds at Pretoria for:

1. The opening of a sectional title register in terms of the provisions of Section 12(1)(b) of the Sectional Titles Act, 1986, and the registration of the attached sectional plan in terms of Section 12(1)(a) of the aforesaid Act, in respect of the scheme known as **Rainbow's End** S.G. No. D25/1998 held under the Title Deed No. T288/2015
2. The issue of certificates of registered sectional title in terms of the provisions of section 12(1)(d) of the aforesaid Act in respect of the sections shown on the said sectional plan;
3. The issue of a certificate of real right in terms of the provisions of section 12(1)(e) of the aforesaid Act in respect of any proviso in terms of section 25(1);
4. The issue of a certificate of real right in terms of the provisions of section 12(1)(f) of the aforesaid Act in respect of the right of exclusive use referred to in section 27(1).

DATED at _____ on this _____ day of _____ 2020.

DEVELOPER

6.2

SG No. D

***Notes: Examiners must please note that accuracy is important in this question.
Candidates were in possession of the forms and details to be completed must thus
comply with the facts***

**Schedule of conditions under section 11(3)(b)
of the Sectional Titles Act, no 95 or 1986**

SS NUMBER OF SCHEME	_____
NAME OF SCHEME	Rainbow's End
NAME AND ADDRESS OF DEVELOPER	1. Peter Khumalo Identity number: 631024 5094 089 married in community of property to

Esther Khumalo
32 Bishop Street, Brooklyn, Pretoria,
0018

2. Peter Nkosi
Identity number: 6112315040089
Married, which matrimonial property system is governed by customary law in terms of the Recognition of Customary Marriages Act No. 120 of 1998 (if polygamous) married in community of property to Leandri Nkosi (if monogamous) (see CRC 27/2013)
33 Bishop Street, Brooklyn, Pretoria, 0018
3. Ben Bengu
Identity number: 5712125040089
married in community of property to each other to Mary Bengu and Ben Bengu
Identity number: 5712125040089
married in terms of customary law
34 Bishop Street, Brooklyn, Pretoria, 0018
4. Lesley Smith
Identity number: 9501010015089
a partner in a civil partnership with Sarel Vermaak
in community of property and registered in terms of the Civil Union Act 17 of 2006
carrying on business in partnership under the name of Get Going Partnership.
35 Bishop Street, Brooklyn, Pretoria, 0018

carrying on business in partnership under the name of Get Going Partnership.

TITLE DEED
DIAGRAM NO:

DIAGRAM DEED:
LOCAL AUTHORITY:
I, the undersigned,

Deed of Transfer T288/2015
SG no 55 of 2014**please note the extending clause provided in the question*
T287/2015

ALEXANDER HAMILTON

a conveyancer practicing as such in Pretoria, do hereby certify that the property known as;

Erf 98 Camperdown township
Registration division JR, Province: Gauteng
measuring 3 000 (three thousand) square metres
Held by Deed of Transfer T288/2015

IS SUBJECT OR ENTITLED to the following conditions of title which burden or benefit the said land, namely:

1. Subject to the following conditions, as contained in Deed of Transfer No T288/2015, namely:
 - a. the property must only be used for residential purposes;
 - b. the property is subject to a servitude for municipal purposes, 2 metres wide, in favour of the local authority along the western boundary thereof indicated by the line DA on SG diagram No. 55/2014 as will more fully appear from Notarial Deed K11/2015 S;
2. And I further certify that the following conditions have been imposed by the Developer in terms of Section 11(2) of the Section Titles Act, 95 of 1986, as amended, burdening or benefiting the sections and common property and binding the owners, their successors in title or assigns, as well as the holder of Sectional Mortgage Bonds and other real rights, namely:

Garden 1 measuring

Garden 2 measuring
3. The Developer reserved the right, as contemplated by Section 25(1) of the Section Titles Act No 95 of 1986, as amended, to erect and complete from time to time, but within a period of 10 (ten) years from the date of the opening to the Sectional Title Register in respect of this scheme, for his personal account a further building or buildings on a specified part of the common property, and to divide such building or buildings into a section or 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 of such sections.
4. SUBJECT further to such conditions as are mentioned or referred to in the aforesaid Deed.
5. AND I certify that, apart from the conditions set out above, no further conditions have been registered against the said title deed or imposed by the Developer.

DATED at _____ on this _____ day of _____ 2020.

CONVEYANCER
ALEXANDER HAMILTON

6.3

Prepared by me

Consent to cancellation of the mortgage bond

We, the undersigned,

*1. Mat Fraser
in my capacity as an official of the Standard Bank of South Africa Ltd, Registration number 1962/123456/06, duly authorized hereto by a Resolution of Directors, the said bank being the legal holder of the undermentioned bond,

and

*2. Noah Olsen
in my capacity as an official of the ABSA Bank Ltd, Registration number 1982/123123/06, duly authorized hereto by a Resolution of Directors, the said bank being the cessionary as security, namely:

NUMBER: B7747/1990

PASSED BY:

1. Peter Khumalo
Identity number: 631024 5094 089
married in community of property to Esther Khumalo

2. Peter Nkosi
Identity number: 6112315040089
Married, which matrimonial property system is governed by customary law in terms of the Recognition of Customary Marriages Act No. 120 of 1998 (if polygamous) married in community of property to Leandri Nkosi (if monogamous) (see CRC 27/2013)

3. Ben Bengu
Identity number: 5712125040089
married in community of property to each other to Mary Bengu
and
Ben Bengu
Identity number: 5712125040089
married in terms of customary law

4. Lesley Smith
Identity number: 9501010015089
a partner in a civil partnership with Sarel Vermaak
in community of property and registered in terms of the Civil Union Act 17 of 2006

carrying on business in partnership under the name of Get Going Partnership.

IN FAVOUR OF

The Standard Bank of South Africa Limited
Registration number 1962/123456/06

FOR THE SUM OF R1 000 000,00 (one million rand) together with a further sum of R200 000,00 (two hundred thousand rand) to secure the contingent costs and payments

AND CEDED TO ABSA Bank Ltd
Registration number 1982/123123/06 as security
Note: this is important

BY CESSION

REGISTERED ON DATE: 10 MAY 2012

DO HEREBY CONSENT TO the cancellation of the mortgage bond

DATED at _____ on this _____ day of _____ 2020.

As witnesses

1. _____

MAT FRASER (on behalf of Standard Bank)

2. _____

NOAH OLSEN (on behalf of ABSA Bank)

**** Consents can also be done separately**

QUESTION 7

7.1

Prepared by me

CONVEYANCER

THOMAS JEFFERSON (123)

**Application in terms of Section 39(2)
of the Administration of Estates Act, 66 of 1965**

I, the undersigned,

ELIZA HAMILTON

in my capacity as executor in the estate of the late Johan Strauss, duly appointed by Letter of Executorship Number 8893/2020 issued by the Master of the High Court at Pretoria on 18 November 2020

do hereby make application to the Registrar of Deeds in Pretoria in terms of section 39(2) of the Administration of Estates Act, to endorse the title deed of

The farm Mooiplaas 123
Registration Division JR, Province: Gauteng
measuring 4000,000 (four thousand comma zero zero zero zero) hectares
Held by Deed of Transfer T681/1989

to the effect that the abovementioned property shall be subject to the stipulations of the will of the late Johan Strauss, dated at Pretoria on 10 January 2010.

SIGNED at _____ on this _____ day of _____ 2020.

EXECUTOR

7.2

- Application in terms of section 39(2)
- Title Deed
- Certified copy of the will (certified by the Master as true copy of the original and endorsed that it was accepted)
- Section 42(1) conveyancer's certificate
- Section 39(2) certificate by the Master as consent for this application

7.3 No

7.4 Should there be a fiduciary, the property can be transferred to the fiduciary, however, the usufruct will have to be created by virtue of a notarial deed.

QUESTION 8

Notes to Examiner: There are obviously various manners to formulate the answer. Please assess the answer according to the essentials required

This agreement is specially subject to and dependent upon:

1. Approval of a loan (suspensive condition)

That the purchaser is successful in obtaining approval for the granting of a loan by a bank or other financial institution, for not less than R2 000 000 (two million rand), upon security of a mortgage bond to be registered over the property at such rates of interest and on such conditions as are stipulated by the bank or institution to which application for the loan is made. Such approval should be obtained within 21 (twenty-one) days after signature hereof by both parties.

The above condition must be fulfilled by not later than 28 days after signature thereof

2. Outside Offer

Until such time as there has been full compliance with all suspensive conditions contained in this agreement, the seller shall be entitled to continue marketing his property, subject thereto that should he receive another or more favourable offer which is not subject to a similar condition, a copy of the said offer shall be delivered to the purchaser, who shall be given the opportunity to:

- i. waive in writing all suspensive conditions contained herein in case of an equal offer; or / declare the agreement unconditional, or
- ii. to make a similar or better offer to the seller

within a period of 48 hours from receipt thereof. In such an event, the seller shall be obligated to accept such new offer from the purchaser. Should the purchaser, however, not make any such offer, the Seller may accept the said further offer, whereupon the original offer to purchase will lapse and be of no further force or effect.

Should any of the above-mentioned conditions not be fulfilled within the specified periods, the entire agreement shall automatically lapse and be of no further force or effect.

QUESTION 9

Yes, in the following circumstances:

- i. In terms of section 57 of the Deeds Registries Act one mortgagor can be substituted by another mortgagor. However, two important requirements are that the whole of the mortgaged property is transferred to the new mortgagor and the current mortgagor may not reserve a real right in such land. The application and consent of the mortgagee must follow prescribed form W
- ii. If a bond was passed by two or more mortgagors over their respective properties owned by each mortgagor, and all the property of a mortgagor is released from the bond, such mortgagor and his property may be released from the operation of the bond. The mortgagee and the remaining mortgagor(s) must consent thereto - (section 55(1)).
- iii. If a bond was passed by a husband and wife married in community of property (or by only one of the spouses) and –
 - a. the marriage is terminated by death or divorce or
 - b. the court has made an order in terms of section 20 or 21 of the Matrimonial Property Act or section 7(6) of the Recognition of Customary Marriages Act,

in terms whereof the property is allocated to one of the spouses, the other spouse may be released from liability under the bond, the spouse who is entitled to the property may assume full liability under the bond and be substituted as the only debtor thereunder - (section 45(2)(c) and 45bis(2)(a) of the DRA). Form T should be used for this purpose.

QUESTION 10

10.1

- 1) T: Application in terms of section 45bis(1)(a)
 - Application s45bis(1)(a)
 - Title Deed
 - Transfer Duty Certificate / Exception certificate
 - Rates Clearance Certificate
 - Divorce Court Order and Settlement agreement
- 2) BC
 - Reduction of cover
 - Mortgage bond

- 3) BC
Form T - Consent to release and substitution
- Consent of mortgagee

10.2

Prepared by me

CONVEYANCER
SAM SMITH (123)

**Application in terms of Section 45bis(1)(a)
of the Deeds Registries Act 47 of 1937**

I, the undersigned,

Joan Price
Identity number 7103120069094
unmarried / divorced

hereby declare that

1. Erf 63 Ulundi Township
Registration division JR, Province of Gauteng
Measuring 800 (eight hundred) square metres
held under Deed of Transfer T66/2002
is registered in my name and the name of my former spouse, James Price, identity number 6901025123127, to whom I was married in community of property.
2. The marriage between me and my said former spouse was dissolved by divorce in terms of a court order of the High Court of South Africa Pretoria, under Case number 2359/2020 on 10 May 2020.
3. In terms of an agreement of settlement dated 10 April 2020 which was made part of the aforesaid court order, the whole aforesaid property was allocated to me.
4. Whereas I am entitled to one-half share in the property by virtue of the marriage in community of property to my former spouse and to one-half share in terms of the aforesaid court order, now therefore I hereby apply for an endorsement to be made on the said deed of transfer to the effect that I am entitled to deal with the said property as if I had acquired the share of my former spouse by means of a formal transfer.
5. I declare that the value of the one half share being transferred is R1 500,000.00 (one million five hundred thousand rand)

SIGNED at _____ on this _____ day of _____ 2020.

Joan Price

Prepared by me

CONVEYANCER
SAM SMITH (123)

**Consent to Endorsement
of Reduction in Cover**

I, the undersigned,

Mat Fraser, duly authorized hereto by resolution of directors of

ABC Bank Limited

Registration number: 1992/123456/06

the legal holder of the aforementioned bond, namely:

number: B5081/2002

passed by: James Price

Identity number 6901025123127

married out of community of property

in favour of: ABC Bank Ltd

Registration number 1992/123456/06

for the sum of: R900 000.00 (nine hundred thousand rand)

do hereby consent to a reduction in cover of R300 000.00 (three hundred thousand rand)
being registered against the above-mentioned bond.

SIGNED at _____ on this _____ day of _____ 2020.

As witnesses:

Mat Fraser

Prepared by me

Consent to release and substitution

I, the undersigned,

Joan Price
Identity number 7103120069094
unmarried / divorced

the former spouse of James Price and the mortgagor under Bond B5081/2002 passed by me in favour of

ABC Bank Limited
Registration number: 1992/123456/06

for the sum of R1 000 000 (one million rand)

do hereby –

- a. consent to the release of my former spouse from liability under the said bond;
- b. assume full liability for all indebtedness under the said bond; and
- c. consent to the substitution of myself as the sole debtor in respect of the said bond;

and

I, Mat Fraser, duly authorized hereto by resolution of directors of

ABC Bank Limited
Registration number: 1992/123456/06

the legal holder of the aforementioned bond, do hereby consent to the release, assumption of liability and substitution of debtor as aforesaid.

SIGNED at _____ on this _____ day of _____ 2020.

As witnesses:

Joan Price

Mat Fraser

TOTAL: [200]