

# THE REPUBLIC OF SOUTH AFRICA

## CONVEYANCING EXAMINATION

### PART 2

18 NOVEMBER 2020

4 Hours

09:00 - 13:15

*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 4 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. Details, especially the description of properties, may be changed to comply with the practice prevailing at your Deeds Office. However, if a question relates to farm property, the description may **NOT** be changed to that of an erf in a township.
5. Candidates must furnish such further details as may be necessary to draw properly the required deeds or documents, e.g. abbreviations (ID XXX), alphabetical symbols for names, and "etc."/"...." are unacceptable.
6. Deeds and documents to be drawn must comply fully with the requirements of the Deeds Registries Act and regulations, i.e. as if intended for lodgement in a deeds registry.
7. Candidates **MUST ANSWER ALL** questions.
8. 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: [200]**

**QUESTION 1****[8]**

You have been instructed to attend to the cancellation of a mortgage bond. List the essential details which your request for a guarantee in favour of a bondholder must contain to enable the bondholder to consent to the cancellation of the bond.

**QUESTION 2****[15]**

John Andrews sells Erf 500 Palala to Stephan Jackson for R1 200 000,00 and for which amount he obtains a loan from ABC Bank. It is ascertained that the following amounts are still owing under the existing bonds registered against the property:

- i) R190 050,00 to XYZ Bank Limited with interest on R190 000,00 at 10% per annum as from 1 November 2020 to date of payment, both dates included.
- ii) R160 000,00 to Speed Bank together with interest at 12% per annum thereon calculated quarterly in advance from 1 October 2020 till the last day of the month, of the quarter wherein the bond is cancelled;
- iii) R130 000,00 to Rex Harrison.

The balance of the loan must be paid to you as conveyancer.

- 2.1 State only the full monetary particulars of the guarantees required to be issued by ABC Bank Limited. (12)
- 2.2 List the transactions, against registration of which the guarantees are to be paid. (3)

**QUESTION 3****[19]**

Erf 123 Hillcrest is registered in the names of Donald Duck and Daisy Duck. The parties were married out of community of property to each other. Donald Duck was sequestrated on the 1<sup>st</sup> September 2020 and Paul Rush was appointed as the trustee of his insolvent estate. The trustee, with the consent of the spouse and the consent of the Master of the High Court, sold the property for R2 500 000,00 to Bargain Properties (Pty) Ltd. The property was bonded to Liberal Bank and the sum of R1 000 000,00 was still owing as at date of sequestration.

Inventing your own particulars:

- 3.1 Draw the power of attorney to pass transfer to Bargain Properties (Pty) Ltd. (10)
- 3.2 List the sequence of transactions and the documents to be lodged in the Deeds Office. (5)
- 3.3 Calculate the amount of transfer duty payable. Show your calculations in detail. (4)

**QUESTION 4****[9]**

Is a Mortgagee's consent required by the Registrar of Deeds in the following instances?

- 4.1 The owner of the mortgaged property applies for the issue of a certificate of registered title in respect of a portion of the property. (1)
- 4.2 The mortgagor is a private company which has been converted to a close corporation. The Registrar of Deeds is requested to endorse this fact on the relevant deeds. (1)
- 4.3 A servitude of right of way is to be registered over the mortgaged property. (1)
- 4.4 The mortgagor's first name appears incorrectly in the title deed but correctly in the bond. The mortgagor now applies to the Registrar of Deeds in terms of Section 4(1)(b) of the Deeds Registries Act 47/1937 for the rectification of the error in the title deed. (1)
- 4.5 A servitude over the mortgaged property, is to be cancelled. (1)
- 4.6 The mortgaged property is transferred by the liquidator of a company that is able to pay its debts. (1)
- 4.7 The mortgaged property is sold in execution by the sheriff and must now be transferred. (1)
- 4.8 The mortgaged property is transferred by the trustee in the insolvent estate of the mortgagor. (1)
- 4.9 The owner of the mortgaged property applies for a certified copy of the title deed which has been lost. (1)

**QUESTION 5****[25]**

You act for a bank and are instructed to draw consents for various acts of registration.

Draw the necessary consents in the following instances: [Draw only that part of the consent starting with the words "..... do hereby consent to ....." which is required in the following cases. (Supplying your own details in these consents.)]

- 5.1 The bond is registered over Erven 19 and 20 in the township of Barkly West. The Erven are to be consolidated and will thereafter be known as Erf 51 Barkly West, measuring 2500 square metres. (5)
- 5.2 A servitude to convey electricity over the mortgaged property must be registered. The servitude is represented on a servitude diagram and the Notary attending to the registration of the servitude has sent you a copy of the Notarial Deed as executed before him on 14 September 2020. (3)

- 5.3 The owner has applied for the establishment of a Township on the mortgaged property. His conveyancer now wishes to apply to the Registrar of Deeds for the opening of the Township Registrar and for the registration of the General Plan. (3)
- 5.4 The owner has obtained approval for the subdivision of the mortgaged property into a number of portions. He has sold Portion 8 which must be transferred to the purchaser thereof, and he intends simultaneously to take out a Certificate of Registered Title in respect of Portion 3 which must remain as part of the security under your client's bond. (9)
- 5.5 The owner is applying to the Registrar of Deeds for the opening of a Sectional Title Register; the Scheme consists of five units and five exclusive use areas. (5)

### **QUESTION 6**

**[43]**

The following person/s are doing business in a partnership known as "Get Going Partnership".

- a) Peter Khumalo, who has entered into a customary marriage with Esther Khumalo and they do not have any other customary marriages;
- b) Peter Nkosi, who has entered into a number of customary marriages prior to the commencement of the Customary Marriages Act No. 120 of 1998;
- c) Ben Bengu and Mary Bengu, who entered into a monogamous customary marriage after the commencement of the Customary Marriages Act No. 120 of 1998. Ben has now entered into a further customary marriage and failed to make an application in terms of Section 7(6) of the Act;
- d) Lesley Smith and Sarel Vermaak who entered into a civil partnership in terms of the Civil Union Act No. 17 of 2006 with no antenuptial contract.

Erf 98 Camperdown is registered in the name of the said individuals in partnership and doing business as "Get Going Partnership" under Deed of Transfer T288/2015.

A block of ten flats has been erected on that property and there is enough room on the property to erect another block of ten flats.

The property is subject to Mortgage Bond B7747/2015 in favour of the Standard Bank of South Africa Limited for one million rand (R1 000 000,00) plus an additional amount of two hundred thousand rand (R200 000,00). The bond has been ceded to ABSA Bank Limited as security.

The extending clause in Deed of Transfer T288/2015 reads "First transferred and still held by Deed of Transfer T287/2015 with diagram SG No. 55/2014 annexed thereto".

The following conditions appear in the abovementioned deed of transfer:

- a) The property may 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;
- c) The property is subject to lease agreement K432/81L for a period of 10 years from 4 July 1981 without an option to renew.

The registered owners have decided to apply for the opening of a sectional title register and for the registration of the sectional plan. They provide you with the approved sectional plan which indicates that the scheme is to be known as “Rainbow’s End” and that, apart from the ten sections comprising the existing flats there are also to be two exclusive use areas, being Garden Areas. In addition, they advise you that they wish to reserve the right to erect another block of ten flats and that these ten flats, will also each have a parking bay as an exclusive use area. The Sectional plan provides for the rights mentioned. They intend to build this additional block of flats within the next ten years.

The Mortgage Bond must be cancelled simultaneously with the opening of the sectional title register.

Invent your own further particulars and based upon the aforesaid facts;

- 6.1 Prepare the application for opening of the sectional title register. Invent your own further particulars that may be required. (17)
- 6.2 Prepare the schedule referred to in Section 11(3)(b) of the Sectional Titles Act, No. 95 of 1986. (17)
- 6.3 Prepare the cancellation of the mortgage bond. (9)

**QUESTION 7** **[13]**

Johann Strauss died on 8 February 2020. He is the registered owner of the Farm Mooiplaas by virtue of Deed of Transfer T681/1989. In terms of the deceased’s will he has bequeathed a usufruct to his daughter, Helen Erasmus, divorced, in respect of the farm subject to the proviso that the property in question devolves on her children who are alive at the date of her death.

- 7.1 Draw the document/s required to be lodged at the Deeds Office to give effect to the terms of the will. Provide your own details to complete your answer. (7)
- 7.2 What must be lodged in the Deeds Office with the document/s referred to in your answer to 7.1. (3)
- 7.3 If the property is bonded must a bondholder’s consent be lodged? (1)
- 7.4 What is the effect if there is a *fiduciary* to whom transfer can be passed? (2)

**QUESTION 8****[18]**

You have been instructed to prepare a deed of sale of a property where:

- a) the property is being sold subject to the fulfilment of a suspensive condition in favour of the purchaser which allows him to obtain a loan from a bank to secure the purchase price of the property; and
- b) the seller will, pending the fulfilment of the suspensive condition, be entitled to market the property and receive written offers from other parties (an outside offer); and
- c) should the seller receive any offer from another person, the purchaser will be entitled to declare the agreement unconditional or match the other offer, failing which the seller shall be entitled to accept the other offer.

Prepare the necessary clauses to be incorporated in the deed of sale to give effect to the aforesaid. Use your own further particulars.

**QUESTION 9****[10]**

A mortgage bond is registered over an erf in a township. Can a mortgagor be released from liability under the bond and, if so, under what circumstances? Discuss with full details.

**QUESTION 10****[40]**

James Price married Catherine Henderson in 1995 out of community of property. In 2002 James acquired Erf 63 Ulundi for R1 000 000,00 and took transfer. The property was burdened with a covering mortgaged in favour of ABC Bank Ltd for R900 000,00 as a covering security for future debts. In August 2003 Catherine died. In June 2012 James married Joan Combrink in community of property. In January 2020 James and Joan divorced. In terms of the settlement agreement and divorce order the property was awarded to Joan.

The bank has agreed to the terms of the settlement agreement and divorce order but requires the security of the bond to be reduced with an amount of R300 000,00. The bond is not to be cancelled and Joan has accepted responsibility for repayment thereof.

The value of the property is R1 500 000,00.

- 10.1 List the sequence of transactions to be registered in the Deeds Office and the documents to be lodged in each cover. (10)
- 10.2 Prepare the document/s required to give effect to the court order and the bond. The bond must not be cancelled. Provide your own further particulars where necessary. (30)

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**- THE END -**