

# Model Answers to the Conveyancing Examination

## September 2014

### Part 1

### Self-Study Deeds Course

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#### Question 1 - Model answer <sup>1</sup>

[20]

1.1

Prepared by me

CONVEYANCER  
Erinda Frantzen

#### Form E

### Deed of Transfer

Be it hereby made known

That Erinda Frantzen appeared before me the Registrar of Deeds at Bloemfontein, she, the said appearer, being duly authorised thereto by a power of attorney granted to her by

1 ANDRE VILJOEN

Identity number 521201 5689 08 2

married in community of property to Sally Viljoen<sup>2</sup>

and

2 NAAS BOTHA

Identity number 500508 5553 08 7

married in community of property to Karen Botha

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<sup>1</sup> Also see September 2009 (Part 1), question 2 for 30 marks. A similar question was also asked in May 2002 (Part 1), question 4.

<sup>2</sup> Consents in terms of section 15(2) of the Matrimonial Property Act by Sally Viljoen and Karen Botha must be lodged together with the transfer.

and  
 3 YVETTE SMITH (FORMERLY COETZEE)  
 Identity number 571219 0359 08 2  
 unmarried  
 carrying on business in partnership as Viljoen & Associates<sup>3</sup>

dated the 10<sup>th</sup> of September 2014 and signed at Bloemfontein

AND the said appearer declared that the aforementioned Andre Viljoen has, in terms of an agreement dated 15 August 2014 retired from the partnership and that in terms of the said agreement his share in the undermentioned property has been taken over by the remaining partners;

AND that she in her capacity aforesaid, did, by these presents, cede and transfer to and on behalf of

1 NAAS BOTHA  
 Identity number 500508 5553 08 7  
 married in community of property to Karen Botha  
 and

2 YVETTE SMITH  
 Identity number  
 unmarried  
 carrying on business in partnership as Botha & Smith Interior Decorators

their heirs, executors, administrators or assigns, in full and free property

ERF 1114 WELKOM  
 District Bloemfontein, Province Free State

Measuring 2 000 (two thousand) square metres

First transferred and still held by Deed of Transfer T4276/1988 with diagram SG No 323/1985 annexed thereto<sup>4</sup> [13]

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<sup>3</sup> See Regulation 34(3). Each partner of the original firm must give transfer to the new partnership. The whole property must be transferred to the new partnership and not only the share of the retiring partner.

<sup>4</sup> As the extending clause in the existing title deed follows the wording of prescribed Form TT, Form UU (suitably adapted) must be used for the

- 1.2 The power of attorney must be signed by each partner of the former partnership, i.e. by Andre Viljoen, Naas Botha and Yvette Smith. [1]  
(Consents by Sally Viljoen and Karen Botha in terms of section 15(2) of the Matrimonial Property Act must also be lodged.)
- 1.3 In such an instance an application, signed by all three partners of the former partnership must be lodged in the deeds registry for an endorsement in terms of section 24*bis*(2) of the Deeds Registries Act on the existing title deed T4276/1988 to the effect that such land vests in the individual partners and thereupon such partners shall be entitled to separately deal therewith as if they had taken formal transfer into their names of their shares in such land. [3]
- 1.4 The individual partners can be substituted as mortgagors in the bond in the place of the former partnership in terms of section 24*bis*(3). The mortgagee must consent to the substitution of the individual partners as mortgagors under the bond and the individual partners must apply to be substituted, jointly and severally under the bond and waive the exception *de duobus vel pluribus reis debendi*. [3]

## **Question 2 - Model answer** <sup>5</sup> [8]

Subject to the following conditions:

- 1 Subject to a servitude area, measuring 25 (twenty five) square metres, for the purpose of erecting and using as a pump house, which servitude area is indicated by the figure abcd on subdivisional diagram S.G. number 800/2014, together the right to draw water from the adjacent dam on the servient tenement hereinmentioned and together with the right of access over the servient tenement for maintenance purposes in favour of -  
THE REMAINING EXTENT OF THE FARM MOOINOOI 123  
Registration Division J.R., Province of Gauteng

Measuring 300,1457 (three hundred comma one four five seven) hectares

Held by Deed of Transfer T75458/2000

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subsequent transfer.

<sup>5</sup> See Example 6C in the example bundle of your notes. Similar questions were asked in May 2012 (Part 1), question 1 and May 2002 (Part 1), question 6.

- 2 Subject to a servitude of aqueduct, 2 metres wide, the centre line of which servitude is indicated by the line efghj on subdivisional diagram S.G. number 800/2014 together with the right of access over the servient tenement for maintenance purposes in favour of -

THE REMAINING EXTENT OF THE FARM MOOINOOI 123  
Registration Division J.R., Province of Gauteng  
Measuring 300,1457 (three hundred comma one four five seven)  
hectares

Held by Deed of Transfer T75452/2000

### Question 3 - Model answer <sup>6</sup>

[12]

- 3.1 "... do hereby consent to the consolidation of Erven 15 and 16 Zastron, Province of KwaZulu Natal, to be known as:

ERF 20 ZASTRON <sup>7</sup>

Registration Division E.T., Province of KwaZulu Natal

Measuring: 2 500 (two thousand five hundred) square metres" <sup>8</sup> [2]

- 3.2 "... do hereby consent to the registration of a servitude to convey electricity over the property mortgaged under this bond, in favour of ESKOM as will more fully appear from attached Notarial Deed of Servitude executed before the notary Erinda Frantzen on 16 February 1995 with diagram annexed thereto and initialled for identification purposes, free from the bond."<sup>9</sup> [2]

- 3.3 "... do hereby consent to:

- 1 the opening of Township Register in respect of the property mortgaged under the said bond and to be known as the Morning Glory Township; and

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<sup>6</sup> See Example 14M (page 4) of the example bundle and May 2006 (Part 1), question 4 and May 2001 (Part 1), question 9

<sup>7</sup> You may use a property description applicable in the area where you practice.

<sup>8</sup> Form MM to the Deeds Registries Act must be used for all the consents in this question.

<sup>9</sup> Section 65(3) requires that the mortgagee consents to the registration of the servitude, free from the bond.

2 the registration of the general plan S.G. No 9945/2014.”<sup>10</sup> [2]

### 3.4

3.4.1 “... do hereby consent for the release of the following property from the operation of the said bond, namely:

PORTION 8 OF THE FARM WATERFALL 123  
Registration Division J.R., Province of Gauteng  
Measuring: 250,0000 (two hundred and fifty comma nil nil nil nil)  
Hectares”

3.4.2 “... 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 THE FARM WATERFALL 123  
Registration Division J.R., Province of Gauteng  
Measuring: 150,1234 (one hundred and fifty comma one two three four) hectares” [4]

3.5 “... do hereby consent to:

- 1 The opening of Sectional Title register in respect of the land mortgaged under the abovementioned bond;
- 2 The registration of the sectional plan in respect of the scheme known as COMORES and situate at  
ERF 51 CAPE TOWN  
situated in the City of Cape Town, Division Cape, Province Western Cape  
Measuring: 4 500 (four thousand five hundred) square metres  
Held by Deed of Transfer T776/1960
- 3 The endorsement of the said mortgage bond to the effect that it attaches to the sections and common property shown on the sectional plan.<sup>11</sup> [2]

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<sup>10</sup> Consent must also be given to the registration of the general plan, as the application for the opening of a township register includes an application of the registration of the general plan.

<sup>11</sup> Section 11(3)(d) specifically prescribes that consent for this must be given by the mortgagee.

**Application in terms of Section 25(3)  
of the Deeds Registries Act 47 of 1937**

I, the undersigned

BRENDA GREEN (BORN BROWN)

Identity number: 921201 4003 08 2

married in community of property to Werner Green, with the exclusion of the community of property in respect of the undermentioned property as a result of the stipulations in the will of the late Joe Brown dated 1 May 1993

do hereby apply in terms of section 25(3) of the Deeds Registries Act 47 of 1937 to the Registrar of Deeds at Pretoria, for the endorsement of the Deed of Transfer T1234/2009 under which is held

PORTION 1 OF THE FARM KAALLAAGTE 31

Registration Division IP, Province of Gauteng

measuring 3 000,0000 (three thousand comma nil nil nil nil) hectares

Whereas I am the only child born of the marriage between Chris Brown and Michelle Brown and is now ascertained following the death of the said Chris Brown on 1 July 2012

Now therefore I hereby **apply for an endorsement to be made on the above title deed to the effect that the name of the said Brenda Green be contained in the title deed and that I shall be entitled to deal with the said property as if I had acquired the said property by means of formal transfer, subject to the exclusion of the community of property as more fully set out in the will of the late Joe Brown dated 1 May 1993.**

Finally I declare the value of the property to be R2 000 000,00 (two million rand).

Signed at Pretoria this 10th day of September 2014.

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Brenda Green

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<sup>12</sup> Similar questions have been asked in July 2004 (Part 1) question 3 for 15 marks and in May 2002 (Part 1) question 8 for 11 marks.

## Question 5 - Model answer

[10]

### 5.1 Conveyancer's Certificate

by virtue of section 15B(3)(a) of the Sectional Titles Act 95 of 1986

I, the undersigned

Gabriel Jacobus le Roux

a conveyancer practising as such in Pretoria, hereby certify that in respect of the transfer from

ERNIE ELS

Identity number 720105 5637 08 2

and

CYNTHIA ELS

Identity number 821212 0012 08 8

married in community of property to each other

to

NIGELLA LAWSON

Identity number 690919 0356 08 7

unmarried

of the following property namely-

A unit consisting of -

- a) Section No. **14** as shown and more fully described on Sectional Plan No. **SS 46/2014** in the scheme known as **SUNSET MEWS** in respect of the land and building or buildings situated at the **TOWNSHIP OF HATFIELD, City of Tshwane Metropolitan Municipality**, of which section the floor area according to the said sectional plan is **175 (one seven five)** square metres in extent; and
- 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 by virtue of Certificate of Registered Sectional Title ST46/2014 (14) (UNIT).

together with Exclusive use areas Garage G14, Garden Area GG 14 and Parking Bay P14

- 1 The body corporate has not yet been established and therefore no moneys are payable to such body corporate.<sup>13</sup>
- 2.1 A real right of extension of a scheme, as contemplated in section 25, has been registered in favour of the developer;
- 2.2 such right was not disclosed to the transferee in the deed of alienation; but
- 2.3 the transferee has given written notice, in terms of section 25(15), that he does not intend to annul the alienation of land for reason of this defect.

Signed at Pretoria on 10 September 2014

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CONVEYANCER  
Gabriël Jacobus le Roux [8]

**5.2 Sequence of transactions that will be lodged simultaneously<sup>14</sup>**

- 1 ST: Els/Lawson - (transfer of unit 14)
- 2 SK: Els/Lawson - (cession of exclusive use areas Garage G14, Garden Area GG 14 and Parking Bay P14)
- 3 SBC: Els/Development Bank - (consent by mortgagee to release of unit 14 and the three exclusive use areas from the operation of the bond)
- 4 SB: Lawson/Nedbank (new bond registration by Lawson in favour of Nedbank) [2]

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<sup>13</sup> As the question does not indicate whether this is the first transfer in the scheme or not (in other words whether the body corporate has been established or not) this paragraph could also have read:  
“1 The body corporate has certified that **as at date of registration** all moneys due to the body corporate by the transferor in respect of the said unit have been paid.”

<sup>14</sup> In the Cape Town deeds registry the sequence is first the release (cover 3), thne cover 1 , 2 and 4.



## Question 6 - Model answer <sup>15</sup>

[20]

6.1.1 AND the appearer declared that -

WHEREAS in terms of the will dated 31 March 2010 and signed at Ixopo of the late Eugene Basson, who died on 12 May 2013, he bequeathed his entire estate to his surviving spouse, Anna Basson to whom he was married out of community of property subject to a fideicommissum in favour of their son Andre Basson <sup>16</sup>

NOW THEREFORE the said appearer, in his capacity aforesaid, did, by these presents, cede and transfer to and on behalf of  
ANNA BASSON

Identity number 501231 0356 08 7

widow

her heirs, executors, administrators or assigns

[4]

6.1.2 AND the appearer declared that -

WHEREAS the said Anna Basson has renounced her fiduciary right title and interest in and to the undermentioned property in favour of the undermentioned fideicommissary;

AND WHEREAS the undermentioned transferee is entitled to the undermentioned property as the only fideicommissary heir in terms of the will of the late Andre Basson dated 31 March 2010, subject to the exclusion of the community of property as more fully set out hereunder;

NOW THEREFORE the appearer, in his capacity aforesaid, did, by these presents, cede and transfer to and on behalf of -

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<sup>15</sup> A similar question was asked in May 2011 (Part 1), question 2 and also in September 2007 (Part 1), question 3 and May 1995 (Part 1), question 2.

<sup>16</sup> No reference must be made to the exclusion of the community of property as provided in the will as the examiners want to test whether you are aware that the community of property is excluded in respect of a fiduciary on grounds of common law.

ANDRE BASSON

Identity number 700101 5247 08 7

married in community of property to Mary Basson, with the exclusion of the community of property from the undermentioned property as a result of the stipulations contained in the will of the late Eugene Basson dated 31 March 2010 [4]

6.2.1 First transferred and still held by Deed of Transfer T1483/1985 with diagram SG No A245/1974 annexed thereto [4]

6.2.2 First transferred by Deed of Transfer T1483/1985 with diagram SG No A245/1974 annexed thereto and held by Deed of Transfer T3698/2013<sup>17</sup> [4]

6.3 No. Both transfers are exempt from the payment of transfer duty in terms of section 9(1)(e) of the Transfer Duty Act, as being inheritances. [2]

6.4 Although the power of attorney in respect of the first transfer will not contain an endorsement in terms of section 42(2) of the Administration of Estates Act, a conveyancer certificate in terms of section 42(1) must be lodged. No endorsement or certificate is required in respect of the second transfer, as transfer is not effected by the executor (the fiduciary is not deceased). [2]

6.5 **Documents to be lodged at the deeds registry iro 6.1.1**

- 1 Existing **title deed** T 1483/1985
- 2 **power of attorney** to pass transfer
- 3 **transfer duty exemption certificate**
- 4 **rates clearance certificate**
- 5 copy of the **will**, certified by the Master and endorsed as accepted by him
- 6 **section 42(1)** conveyancer certificate

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<sup>17</sup> This number has been made up as the existing title deed number whereby Anna Basson held the property was not disclosed in the question.

## Question 7 - Model answer

[65]

7.1 I would draft an application in terms of section 15B(1)(d) of the Sectional Titles Act, read together with section 68(1) of the Deeds Registries Act, to be signed by Siphiso Nxumalo and Dudu Zuma (the registered owners of the unit), in terms whereof they apply for the noting of the lapse of the these two conditions (usufruct and tie condition), as both are personal servitudes in favour of Nonaindia Nxumalo, who has died. A personal servitude which lapses upon the death of the holder thereof. I would lodge the following documents in a coloured lodgement cover and link it as number 1 of the batch:

- ▶ Existing title deeds for units 26 and 27 to receive the endorsements regarding the lapse of the two servitudes
- ▶ application referred to above
- ▶ Notarial Tie agreement SK12/2004
- ▶ proof of the lapse (death certificate or death notice of Nonaindia Nxumalo and consent of excutor that unit 26 may be seperately transferred)

It is not necessary to lodge a transfer duty receipt or exemption certificate, as both servitudes have served their time.

**Application in terms of Section 15B(1)(d) of the Sectional Titles Act 95 of 1986, read together with Section 68(1) of the Deeds Registries Act 47 of 1937**

We, the undersigned

SIPHISO NXUMALO

Identity Number 640421 5010 08 6

and

DUDU ZUMA

Identity number 660329 0129 08 4

married in community of property to each other

do hereby apply in terms of Section 15B(1)(d) of the Sectional Titles Act 95 of 1986, read together with section 68(1) of the Deeds Registries Act 47 of 1937 to the Registrar of Deeds at Pretoria, for the endorsement of the Deed of Transfer ST123/2004 in respect of -

A unit consisting of -

- a) Section No. **26** as shown and more fully described on Sectional Plan No. SS **102/1982** in the scheme known as **ATHOLLBANK** in respect of the land and building or buildings situated at the **ATHOLL GARDENS TOWNSHIP, in the area of CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY**, of which section the floor area according to the said sectional plan is **210 (two hundred and ten)** square metres in extent; and
- 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.

As registered owners of the abovementioned property and in respect of the death of the usufructuary and holder of notarial tie condition, Nonaindia Nxumalo on 23 July 2010 **we hereby apply for an endorsement on the abovementioned deed of transfer to the effect that:**

- 1 the personal servitude of usufruct, held under abovementioned deed of transfer; and**
  - 2 the notarial tie agreement SK12/2004 of units 26 and 27 in the scheme ATHOLLBANK**
- have lapsed.**

Signed at Pretoria on 10 May 2014.

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S Nxumalo

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D Zuma

7.3

### **MEMORANDUM**

PROCEDURE TO BE FOLLOWED FOR THE REGISTRATION OF AMENDING SECTIONAL PLAN OF EXTENSION SG D299/2009 OF SECTION 26 IN THE SCHEME KNOWN AS ATHOLLBANK

**TO:** SIPHISO NXUMALO  
DIRK STORM

**DATE:** 10 SEPTEMBER 2014

**MEMORANDUM PREPARED BY:** ERINDA FRANTZEN

- 1 Section 24 of the Sectional Titles Act deals with the extension of a section.
- 2 The extension of a section must be approved by a special resolution of the body corporate. This resolution has already been taken as the sectional plans would not have been approved without the submission of such

resolution to the Surveyor-General. We do, however, need a certified copy of the resolution for record purposes. Kindly provide us with the contact details of AP Marshall for this purpose.

- 3 A sectional plan of extension, which must contain a block plan in this instance, must be drafted by a land surveyor or architect and be approved by the Surveyor-General. The copy of the plan provided to us does include a block plan and it has already been approved by the Surveyor General. We need two registration copies thereof for lodgement in the deeds office. Kindly let us know if you are not in possession thereof in order for us to make the necessary arrangement for acquiring same.
- 4 We also need the original title deed for unit 26. It should be in possession of Mr Nxumalo, as it appears that there is no bond endorsement attached to the title deed.
- 5 We need to obtain a certificate from a land surveyor or architect setting out the percentage deviation in the participation quota of section 26 as a result of the extension.
- 6 If the percentage deviation is more than 10% you have to comply with section 24(6A) of the Sectional Titles Act. Section 24(6A) requires the following:
  - 6.1 The applicant for the registration of the sectional plan of extension (Sihipso Nxumalo and Dudu Zuma) must send a notice per registered post to every mortgagee in the scheme. There are specific particulars that need to be addressed in these notices. We shall be in a position to assist with the drafting and sending of these notices on your behalf.
  - 6.2 The identity of all the mortgagees will therefore have to be ascertained.
  - 6.3 If we do not receive any reaction to the notices within 30 days after the date upon which the notice has been sent per registered post, it will be deemed that the mortgagee has no objection to the proposed extension and that the mortgagee consents thereto.
  - 6.4 If there are mortgagees that object, this might delay the process as their objections need to be attended to.

- 7 As the extension has been built over common property, the extension qualifies as a transaction in respect of property as defined in the Transfer Duty Act and we will have to obtain a transfer duty receipt or exemption certificate. For this purpose we need confirmation of any amount that you possibly had to pay to the body corporate as consideration for the granting of their approval to the extension.
- 8 An application for the registration of the amending sectional plan of extension must be signed by Siphiso Nxumalo and his wife Dudu Zuma.
- 9 We require the original divorce order in respect of the former marriage between Mr Siphiso Nxumalo and Margareth Nxumalo to ensure that unit 26 was awarded to Mr Siphiso Nxumalo upon divorce and that Margareth does not have any claim to the property. If you cannot provide us with the original, we will have to obtain a certified copy from the High Court. For that purpose we need to know at which court you were divorced.
- 10 **The documents to be lodged in the deeds office are:**
- i) two registration copies of the **amending sectional plan of extension** SG D299/2009, which must include the blockplan;
  - ii) **application** (drafted in accordance with prescribed form O) for the registration of the amending sectional plan of extension.
  - iii) the **divorce court order** in the case between Siphiso Nxumalo and Margareth Nxumalo (either the original or a copy certified by the registrar of the high court, or a conveyancer or a notary)
  - iv) original **title deed ST123/2004** for section 26
  - v) certificate by the land surveyor or architect confirming that the percentage deviation in the participation quota of the section to be extended does not exceed 10% or if it does exceed 10% a certificate by a conveyancer confirming that the mortgagee of every unit in the scheme has consented to the registration of the sectional plan of extension of section 26.
  - vi) **transfer duty receipt** or exemption certificate. [15]

Prepared by me

CONVEYANCER

Erinda Frantzen

## FORM O

### Application under section 24(1)<sup>18</sup> of the Sectional Titles Act, 1986

We, the undersigned

SIPHISO NXUMALO

Identity Number 640421 5010 08 6

and

DUDU ZUMA

Identity number 660329 0129 08 4

married in community of property to each other

do hereby apply to the Registrar of Deeds at Pretoria for:

- 1 The registration of the attached (amending) sectional plan of extension of a section (S.G. D299/2009) in terms of the provisions of section 24(6) of the Sectional Titles Act, 1986, in respect of section number 26 as shown and more fully described on sectional plan no. SS102/1982<sup>19</sup> in the scheme known as **ATHOLLBANK** in respect of the land and building or buildings situate at **ATHOLL GARDENS TOWNSHIP**, Local Authority: **CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY** and held under Deed of Transfer ST123/2004.

Signed at Pretoria on 10 May 2014

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S Nxumalo

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D Zuma [15]

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<sup>18</sup> Form O to the Sectional Titles Act is used.

<sup>19</sup> Reference must here be made to the sectional plan on which section 26 is indicated before the extension is registered.



## Power of Attorney

We, the undersigned

SIPHISO NXUMALO

Identity Number 640421 5010 08 6

and

DUDU ZUMA

Identity number 660329 0129 08 4

married in community of property to each other

do hereby nominate, constitute and appoint Erinda Frantzen and/or Gabriël Jacobus le Roux with power of substitution to be my true and lawful agent and to appear before the Registrar of Deeds at Pretoria and then and there as my act and deed to declare that -

Siphiso Nxumalo did, with the written consent of Dudu Zuma, on 10 July 2010 sell the undermentioned property for an amount of R900 000,00 (nine hundred thousand rand) to the undermentioned transferee

DIRK STORM

Identity number 721201 5058 08 7

unmarried

and the property being : A unit consisting of -

- a) Section No. **26** as shown and more fully described on Sectional Plan No. SS **123/2014**<sup>20</sup> in the scheme known as **ATHOLLBANK** in respect of the land and building or buildings situated at **ATHOLL GARDENS TOWNSHIP, CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY**, of which section the floor area according to the said sectional plan is **278 (two hundred and seventy eight)**<sup>21</sup> square metres in extent; and

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<sup>20</sup> As soon as the amending sectional plan of extension of a section has been registered, Registrar of Deeds will allocate a new SS number to such plan. In subsequent dealings with the extended section reference must be made to this new SS number. As the new SS number was not provided in the question, a new SS number has been made up.

<sup>21</sup> The larger extent of the extended section 26 can be found on sheet 5, the participation quota sheet of Sectional Plan SG D299/2009.

- 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 by Deed of Transfer ST123/2004 <sup>22</sup>

and further to cede and transfer the said property to the said transferee.

Signed at Pretoria on 10 September 2014

Witnesses:

1			S Nxumalo
2			D Zuma [15]

### Question 8 - Model answer

**[25]**

- 8.1 The title deed in terms whereof Unit 5 in the scheme Omygosh is held must first be rectified in terms of section 4(1)(b) of the Deeds Registries Act to indicate Ebrahim Vally and his spouse Priscilla as being married in community of property. Thereafter an application must be brought by both spouses in terms of section 45bis(1A)(b) of the Deeds Registries Act in terms whereof the property is allocated to each spouse in equal one half shares.<sup>23</sup>

[5]

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<sup>22</sup> The existing title deed (ST123/2004) was endorsed regarding the extension of section 26. A new deed of transfer or other deed is therefore not drafted and registered when a section is extended.

<sup>23</sup> Registrars' Conference Resolution 32/2005. Question 8.1 was also tested in May 2009 (part 2), question 5 for 4 marks.

CONVEYANCER  
Gabriël Jacobus le Roux

**Application and affidavit in terms of**  
Section 4(1)(b) of the Deeds Registries Act 47 of 1937

I, the undersigned

1 EBRAHIM VALLY

Identity number: 581011 5003 08 2  
married out of community of property

do hereby make oath and say:

1 That I was married in community of property to Priscilla Vally at the time when the property held by Deed of Transfer ST4569/2010 was registered into my name.

2 That I was incorrectly described in the said Deed of Transfer as married out of community of property.

3 That there are no other deeds or documents registered in the deeds registry at Pretoria in which marital status us was incorrectly reflected.

4 That the required amendment will not have the effect of transferring any rights.

5 That I do hereby apply to the Registrar of Deeds at Pretoria that the error be rectified so that the transferee in the vesting clause is described as follows in the said Deed of Transfer:

Ebrahim Vally

Identity number: 581011 5003 08 2 and

Priscilla Vally

Identity number: 681215 0036 08 2

married in community of property to each other

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E Vally

I certify that the deponents have acknowledged that they know and understand the contents of this affidavit which was signed and sworn to before me at Pretoria on 10 September 2014.

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COMMISSIONER OF OATHS

CONVEYANCER  
Gabriël Jacobus le Roux

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

We, the undersigned

- 1 Ebrahim Vally  
Identity number: 581011 5003 08 2  
married out of community of property
  
- 2 Priscilla Vally  
Identity number: 681215 0036 08 2  
married out of community of property

do hereby apply in terms of section 45bis(1A) of the Deeds Registries Act 47 of 1937 to the Registrar of Deeds at Pretoria, for the endorsement of the Deed of Transfer ST4569/2010 in respect of

A unit consisting of - <sup>24</sup>

- a) Section No. **5** as shown and more fully described on Sectional Plan No. **SS 753/2008** in the scheme known as **OMYGOSH** in respect of the land and building or buildings situated at **CENTURION TOWNSHIP, CITY OF TSHWANE METROPOLITAN MUNICIPALITY**, of which section the floor area according to the said sectional plan is **295 (two hundred and ninety five)** square metres in extent; and
  
- 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.

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<sup>24</sup> The prescribed form for this description can be found in paragraph 1 of Form H issued under the Sectional Titles Act.

Whereas our marital status was changed from in community of property to out of community of property by a court order issued by the High Court of South Africa Gauteng Division, Pretoria dated 15 May 2014 in terms of section 21 of the Matrimonial Property Act, 88 of 1984, **and the property was awarded to both of us in equal shares, we hereby apply that an endorsement be made on the above-mentioned title deed to the effect that each one of us is entitled to deal with his or her one-half a share of the above-mentioned property as if each of us had received formal transfer thereof.**

We declare that the value of the herein mentioned property is R1 200 000,00 (one million two hundred thousand rand).

Signed at Pretoria on this 10<sup>th</sup> day of September 2014.

---

E Vally

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P Vally [20]

## **Question 9 - Model answer**

**[30]**

9.1 I will draft the necessary documents for the registration of a collateral bond over Unit 9, passed by the same mortgagor (ABC (Pty) Ltd) than in the principal bond (that is already registered for R10m) in favour of the same mortgagee than in principal bond (Vatso Bank) in respect of the same cause of debt than in the principal bond (loan) over other property of the mortgagor (Unit 9 in the scheme Nouja) as additional security.

Although section 112 of the Companies Act 71 of 2008 requires a special resolution of the shareholders of the disposing company where the greater part of its assets are disposed, mortgaging does not fall under the requirement of “disposal” and therefore a special resolution by shareholders is not necessary.<sup>25</sup>

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<sup>25</sup> In Standard Bank of South Africa Ltd v Hunkydory Investments 188 (Pty) Ltd the court held that dispose means a disposal in the form of a transfer of ownership rather than a transaction that exposes the company’s assets to the risk of forced disposal because of borrowing.

## Power of Attorney

I, the undersigned,

Mark Wilhelm in my capacity as director and duly authorised thereto by virtue of a resolution of  
ABC (PTY) LTD  
Registration number 1990/369547/07

do hereby declare that I have this day signed and executed a Collateral Sectional Mortgage Bond in favour of VATSO BANK LIMITED, Registration number 1960/004586/06, its order, successors or assigns (hereinafter referred to as the mortgagee) for the sum of **R10 000 000,00 (ten million rand)**, together with the sum of **R2 000 000,00 (two million rand)** and specially hypothecating as a First mortgage subject to the conditions set out in an annexure to the said bond -

A unit consisting of -

- a) **Section 9** as shown and more fully described on sectional plan no. **SS111/2009** in the scheme known as **NOUJA** in respect of the land and building or buildings situated at **SANDTON TOWNSHIP, local authority CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY**, of which section the floor area according to the said sectional plan is **1 750 (on thousand seven hundred and fifty)** square metres in extent; and
- 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 by Deed of Transfer ST22/2010

Subject to all the terms and conditions contained in the aforesaid Deed of Transfer

and I do hereby nominate, constitute and appoint

**OLIVIA GROENEWALD**

with power of substitution to be my agent and to appear before any Conveyancer practising as such in the Republic of South Africa and then and there as my act and deed to sign and execute a bond corresponding with the draft bond and to make and authenticate all such alterations, additions and/or deletions in and to the bond as may be necessary for the registration thereof;<sup>26</sup>

---

<sup>26</sup> You could have omitted this paragraph if the mortgagor personally appeared before the conveyancer.

and I do hereby nominate, appoint and confer authority upon

**GABRIËL JACOBUS LE ROUX**<sup>27</sup>

to be my attorney, conveyancer and agent to act in respect of the said transaction and procure registration of the said sectional mortgage bond and furthermore as my act and deed to make and authenticate all such alterations, additions and/or deletions in and to the said bond as may be necessary for the purpose of registration thereof

and generally to do whatsoever may be necessary to make the said bond valid and effectual as I could do if personally present, hereby ratifying all and whatsoever the said attorney, conveyancer and agent shall lawfully do or cause to be done by virtue of these presents.

Signed at Johannesburg on 10 September 2014 .

As Witnesses:

1 \_\_\_\_\_

2 \_\_\_\_\_

\_\_\_\_\_  
M Wilhelm obo ABC (Pty) Ltd

---

<sup>27</sup> Although it is not required for a conveyancer (or the mortgagor himself) to appear before the registrar of deeds and pass the bond, the sectional bond must still be registered in the deeds office and a conveyancer therefore needs authority for such registration on behalf of the mortgagor.

## Collateral Sectional Mortgage Bond

I, the undersigned

OLIVIA GROENEWALD

duly authorised thereto by virtue of a Power of Attorney signed at Johannesburg on 10 September 2014 and granted to me by <sup>28</sup>

Mark Wilhelm in his capacity as director and duly authorised thereto by virtue of a resolution of

ABC (PTY) LTD

Registration number 1990/369547/07 <sup>29</sup>

(Hereinafter referred to as the mortgagor),

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<sup>28</sup> You could have let the mortgagor personally appear before the conveyancer and then this paragraph would have been omitted.

<sup>29</sup> As the power of attorney is not lodged in the deeds office, the full names and authority of the person acting on behalf of the mortgagor must be inserted here.



do hereby acknowledge myself to be lawfully indebted and bound to  
VATSO BANK LIMITED  
Registration number 1960/004586/06  
its successors in title or assigns  
(Hereinafter referred to as the mortgagee)

in the sum of R10 000 000,00 (ten one million rand), arising from and being for money lent and advanced as security for which indebtedness mortgage bond B123/2012 (hereinafter called the principal bond) was registered in the Deeds Registry at Bloemfontein on the 6<sup>th</sup> of October 2012 over the property thereby specially hypothecated;

And whereas the said mortgagee requires the indebtedness of the mortgagor under the principal bond to be further secured by the hypothecation of the undermentioned property as collateral security therefor;

Now therefore, I, renouncing all benefits arising from the legal exceptions *non numeratae pecunia*, *non causa debiti*, revision of accounts, *errore calculi* and no value received<sup>30</sup> (in so far as the renunciation thereof is not prohibited by the National Credit Act), with the full force and effect of which I declare myself to be fully acquainted, do by these presents declare and acknowledge the company to be held and firmly bound unto and on behalf of the said mortgagee, its order or assigns in the aforesaid sum of R10 000 000,00 (ten million rand) together with the sum of R2 000 000,00 (two million rand) as a preferent charge for costs and other matters as more fully set out in the principal bond, and as collateral security for the due and proper repayment of the aforesaid sums with interest on the said capital sum and for the due and proper fulfilment of all the terms and conditions mentioned or referred to in the principal bond as well as all my obligations thereunder, I declare to bind specially as a first mortgage -

A unit consisting of -

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<sup>30</sup> The same exceptions that have been renounced in the principal bond must be renounced in the collateral bond. As the cause of debt in the principal bond is for money lent and advanced the renunciation of the exceptions above would have been included in the principal bond.

- a) **Section 9** as shown and more fully described on sectional plan no. **SS111/2009** in the scheme known as **NOUJA** in respect of the land and building or buildings situated at **SANDTON TOWNSHIP, local authority CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY**, of which section the floor area according to the said sectional plan is **1 750 (on thousand seven hundred and fifty)** square metres in extent; and
- 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 by Deed of Transfer ST22/2010 and subject to such conditions as set out in the aforesaid deed of transfer

Signed at Johannesburg on 11 September 2014

\_\_\_\_\_  
Mortgagor or his duly authorised agent

Before me, Conveyancer

\_\_\_\_\_

Registered at Johannesburg on  
Seal of Office

\_\_\_\_\_  
Registrar of Deeds

## ANNEXURE

I, the undersigned

Mark Wilhelm in my capacity as director and duly authorised thereto by virtue of a resolution of

ABC (PTY) LTD

Registration number 1990/369547/07

(hereinafter referred to as the mortgagor), further declared that the Collateral Sectional Mortgage Bond to which this annexure is attached shall be subject to the following terms and conditions

- 1 This collateral bond shall be subject to all the terms and conditions set out in the principal bond as fully and effectually as if the same had been inserted herein and to the special condition that upon payment and discharge of all obligations secured under the principal bond, this collateral bond shall be null and void abut shall otherwise be and remain of full force and effect.
- 2 The mortgagee is irrevocably appointed *in rem suam* to act on behalf of the mortgagor in matters affecting the unit and the mortgagor's relationship with the body corporate and the sectional title owners;
- 3 The mortgagee shall be authorised to attend general meetings and vote on behalf of the mortgagor;
- 4 The mortgagee shall be entitled to all notices and other information in possession of the body corporate which is relevant to his/her security.

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Mortgagor or his duly authorised agent

Before me, Conveyancer

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[25]

**TOTAL: [200]**

# Model Answers to the Conveyancing Examination

## September 2014

### Part 2 Self-Study Deeds Course

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#### Question 1 - Model answer <sup>31</sup>

[4]

1 **In respect of the signed consent to cancellation**

In a Registrars' Conference Resolution <sup>32</sup> it was resolved that the consent to cancellation may be utilized even after the death of the person who gave the consent, provided the estate duty clearance is provided. If a duly appointed agent signed the consent before the mortgagee's death, the consent is also acceptable. The debtor under the bond has already performed by repayment and the consent signed by X during his lifetime remains valid.

2 **In respect of the signed power of attorney**

In this instance the power of attorney is automatically revoked and the conveyancer will not be able to use the power of attorney to pass transfer. The death of X terminates the agency and a new power of attorney must be obtained from the executor of the deceased's estate once the letters of executorship have been issued. When documentation has already been lodged at the deeds registry, it must be withdrawn before registration is executed and be lodged again after a new power of attorney has been obtained.

#### Question 2 - Model answer

[3]

If a fiduciary interest in land terminates before transfer of the land has been registered in favour of the fiduciary, it shall be competent to transfer the land directly to the fideicommissary - section 14(1)(b)(vi) of the Deeds Registries Act. The property may therefore be transferred by the executor in the estate of the late X directly to the grandson, Z (fideicommissary).

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<sup>31</sup> Also asked in Question 10 (Part 2) September 2005 for 4 marks.

<sup>32</sup> 32/1965.

### Question 3 - Model answer

[28]

3.1 And the said appearer declared that

WHEREAS in the matter in which XYX (Pty) Ltd Limited was the plaintiff and Jo Brown, Identity Number 690306 5032 081, was the defendant and by virtue of a writ issued by the High Court of South Africa (North Gauteng Division) on 2 January 2011 at Pretoria under case number 301/2010, the undermentioned property was attached by the sheriff;

AND WHEREAS the hereinafter mentioned property, registered in the name of the said Jo Brown, was thereafter sold by the sheriff by public auction on 3 April 2011 [5]

3.2 And the appearer declared that the said late Jo Brown, during his lifetime had truly and legally sold the undermentioned property on 3 April 2011 [3]

3.3 And the appearer declared that his principal had truly and legally donated the undermentioned property on 15 May 2014 [4]

3.4 And the appearer declared that -

WHEREAS, in terms of the joint will, dated 10 April 2009 of the late Jo Brown, who died on 15 January 2014 and his surviving spouse Alice Brown to whom she was married in community of property, the testators massed their estates and the undermentioned property was specifically bequeathed to their son, James Brown, subject to a usufruct in favour of the surviving spouse and further subject to the exclusion of the community of property as more fully set out hereunder;

AND WHEREAS the surviving spouse has adiated the terms of the will;

Now therefore the appearer in his capacity aforesaid hereby cedes and transfers to and on behalf of [8]

3.5 And the appearer declared that -

WHEREAS the undermentioned transferee bought the undermentioned property in terms of a deed of sale dated 4 January 2011, but in error received transfer Erf 14 Hatfield Township by Deed of Transfer T10/2012

AND WHEREAS I purchased Erf 14 Hatfield Township in terms of a deed of sale dated 4 January 2011, but in error received transfer of Erf 15 Hatfield Township by Deed of Transfer T11/2012

AND WHEREAS I and the undermentioned transferee have agreed to rectify the position and in consequence of such agreement, I am simultaneously herewith receiving transfer from the undermentioned transferee of the said Erf 14 Hatfield Township

NOW THEREFORE I hereby authorise the appearer to transfer to... [8]

**Question 4 - Model answer [4]**

4.1 A deed of alienation in which a real right of extension has not been disclosed shall be voidable at the option of the purchaser. After notice by the purchaser to the seller that he annuls the alienation, the alienation shall be void - section 25(15). [2]

4.2 I would inform John Smith of the real right of extension, provide him with the necessary particulars thereof and inform him of his rights as discussed in 4.1 in order for him to decide whether he wants to continue with the transaction. If he wishes to proceed with the transaction, I will draw a written notice for him to sign wherein he confirms that he does not intend to annul the alienation for reason of the non-disclosure of the real right of extension. [2]

## Question 5 - Model answer

[2]

Section 80 of the Administration of Estates Act only requires the consent from the Master or the High Court if a minor intends to alienate or encumber any immovable property. It does not require such consent when a bond that is registered in favour of a minor must be cancelled as no alienation of immovable property is taking place.<sup>33</sup> In *Ex Parte MacRobert NO* it was decided that it is unnecessary for a guardian to obtain the court's approval for the cancellation of a bond that is registered in favour of a minor. The minor must, however, still be assisted by his parent or guardian in the execution of the required consent. It is not necessary for both parents or all the guardians to consent, the consent of 1 is sufficient.

## Question 6 - Model answer

[6]

6.1 No, he may not, if it is a long term lease that is to be registered in the deeds registry. According to section 15(2)(a) of the Matrimonial Property Act the consent of the other spouse is required if immovable property is to be alienated. A registered long term lease is defined in the Deeds Registries Act as "immovable property". A lease will further boil down to an alienation. If the lease is, however, a short term lease this will not boil down to the conferring of a real right in immovable property under section 15(2), but only a personal right and the consent of the John's spouse will not be required. [2]

6.2 As the underhand surety by John Brown is not given in the ordinary course of his business, the written consent by Sue Brown to such underhand surety, attested by two competent witnesses is required, which consent may not be given by way of ratification.

With regard to the mortgaging of Erf 1234 Hillside as security for the surety, the written consent by Sue Brown, attested by two witnesses is also required, as this constitutes the mortgaging of immovable property as referred to in section 15(2) (a) of the Matrimonial Property Act, which consent may not be given by way of ratification. [2]

6.3 Yes. Section 15(9) of the Matrimonial Property Act provides that when a spouse enters into a transaction for which the consent of the other spouse

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<sup>33</sup> Registrars' Conference Resolution 25/1980.

was required it is deemed that the transaction has been entered into with the necessary consent if the other transacting party does not know and cannot reasonably know that the transaction is being entered into contrary to the provisions of section 15(2) or 15(3). [2]

### **Question 7 - Model answer**

**[3]**

- 1 The incorrect spelling of his name can be rectified by drafting an application and affidavit in terms of section 4(1)(b) of the Deeds Registries Act for an endorsement, for signature by my client and lodgement in the deeds office.
- 2 The interest rate may be amended by an agreement in terms of section 3(1)(s) of the Deeds Registries Act, to be signed by both the mortgagor and the mortgagee, for lodgement in the deeds registry.
- 3 The capital amount of the bond may not be amended by a section 3(1)(s) of the Deeds Registries Act agreement. The capital amount of the bond may be reduced by the noting of a part payment or the reduction of cover. In this instance, however, where the capital amount must be increased, the bond will have to be cancelled and a new bond (substitutive bond) for the correct amount must be registered.

### **Question 8 - Model answer**

**[6]**

When a property is sold to a person acting as an agent of someone else (John Smith or nominee), the agent (John Smith) must disclose to the seller the name and address of the principal on whose behalf he is acting and give the seller a copy of the documents appointing him as agent. This must be done on the same day as the day on which the contract of purchase and sale has been concluded or, in the case of an auction, on the same day as the day on which the auctioneer accepted the purchaser's bid - (section 16 of the Transfer Duty Act). If this is not done by the agent (John Smith) it shall, for purposes of the payment of transfer duty, be presumed, unless the contrary is proved to have been acquired by the agent (John Smith) himself. The effect of this section is that if a person cannot disclose the name of the nominee on the same day, but does so later, the purchase will be regarded as two separate transactions for transfer duty purposes. In other words, the first purchaser (John Smith) will have to pay transfer duties on the purchase price and the nominee will also have to pay transfer duties on the purchase price.



## Question 9 - Model answer

[5]

The proviso to section 76(1) provides for the registration of an unregistered praedial servitude in the power of attorney to pass transfer from A to B. It is therefore not necessary to create the servitude notarially which would result in the saving of costs. The procedure to achieve this is as follows:

- 1 The seller (A) must acknowledge the existence of the unregistered servitude by disclosing the existence thereof in the deed of sale and then incorporating it into the power of attorney. A separate acknowledgement by A is not required. His signature on the power of attorney is sufficient.
- 2 B (purchaser) must consent in writing to the incorporation of the servitude into the deed of transfer. He may give his consent on the power of attorney or on a separate consent in which the servitude is described.
- 3 C must accept the servitude in favour of his land. He does this by appointing a conveyancer under a power of attorney to appear before the Registrar on his behalf on the day of registration of the deed of transfer and accept the servitude in favour of his land. This power of attorney would therefore be a second, separate power of attorney in the set.

## Question 10 - Model answer

[3]

Joan Jillson  
Identity number 420916 3043 08 7  
formerly unmarried  
(now married out of community of property)

## Question 11 - Model answer

[3]

Jo Jackson  
Identity number 440919 5096 08 2  
(now deceased)  
and  
Jill Jackson  
Identity number 501001 0057 08 7  
(formerly married in community of property to each other)

## Question 12 - Model answer

[10]

The Housing Consumer 's Protection Measures Act is applicable to any home builder.<sup>34</sup> Cool Ideas is a home builder” as defined in the sadi Act as being a person who carries on the business of a home builder. “Business of a home builder” is defined as to include to cause a home to be constructed for any person. According to section 10 no person may carry on the business of a home builder or receive any consideration from a contract for the construction of a house, unless he is registered at the NHBRC. Not only the home builder that does the construction work must be registered but also the home builder that enters into an agreement with other home builders to construct homes.<sup>35</sup> If a home builder is not thus registered and carries on the business of a home builder or receives consideration, he shall be guilty of an offence and punishable with a fine and/or imprisonment.

As Cool Ideas is not registered as a home builder, it is not entitled to carry on the business of a home builder nor to receive any consideration therefor and the members make themselves guilty of an offence. Cool Ideas was therefore not entitled to receive any consideration and is also not entitled to the outstanding consideration payable. I will therefore advise Cool Ideas to immediately register as a home builder.

Section 13 of the Housing Consumer’s Protections Measures Act provides that an agreement between a home builder and a housing consumer shall be deemed to include warranties enforceable by the housing consumer against the home builder in any court which include -

- a) that the home -
  - i) shall be constructed in a workmanlike manner;
  - ii) shall be fit for habitation
  - iii) shall be constructed in accordance with -
    - aa) the NHBRC Technical Requirements to the extent applicable to the home at the date of enrolment of the home with the Council;
    - bb) the terms, plans, specifications of the agreement concluded with the housing consumer
  
- b) the home builder shall -

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<sup>34</sup> Section 1A.

<sup>35</sup> Section 10(6)(b).

- i) at the cost of the home builder and upon demand by the housing consumer rectify major structural defects in the home caused by the non-compliance with the NHBRC Technical Requirements and occurring within the period as set out in the agreement and which shall not be less than 5 years as from the date of occupation, and notified to the home builder by the housing consumer within that period;
- ii) rectify non-compliance with or deviation from the terms, plans and specifications of the agreement or any deficiency related to design, workmanship or material notified to the home builder by the housing consumer within a period stipulated in the agreement and which shall not be less than three months as from the occupation date; and
- iii) repair roof leaks attributable to workmanship, design or materials occurring and notified to the home builder by the housing consumer within a period set out in the agreement and which shall not be less than 12 months as from the occupation date.

It should be ascertained whether the quality of certain aspects of the building work in respect of which Ms Hubbard complains has bearing on (b)(i), (ii) or (iii) above and then whether she gave notice of the defects within the periods as set out above. If the answer is in the affirmative, Ms Hubbard shall be entitled to enforce the guarantees against Cool Ideas who will have to rectify the defects at his own cost. If not, such guarantees have lapsed and she will not be entitled to enforce same against Cool Ideas.

If Ms Hubbard is entitled to enforce the guarantee, Cool Ideas may in terms of its contract with Velvori Construction, claim from Velvori to do the necessary repairs and rectification or to claim damages from Velvori for its omission to do the work as agreed to.

### **Question 13 - Model answer**

**[11]**

- 13.1 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 a single transaction on behalf of that other person; and
- 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. [3]

13.2 Records to be kept are:

- a) the identity of the client and any agent acting on behalf of the client;
- b) the manner in which the identity was established;
- c) the nature of the business relationship or transaction;
- d) in the case of a transaction -
  - i) the amount involved; and
  - ii) the parties to that transaction;
- e) all accounts that are involved in -
  - i) transactions concluded in the course of that business relationship; and
  - ii) that single transaction;
- f) all documents or copies of documents obtained by the attorney in order to verify any person's identity. [6]

- 13.3 An attorney must keep records 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. [2]

**Question 14 - Model answer [6]**

- 1 James Viljoen  
Identity number 850210 6396 08 7  
unmarried  
(1/2 share)
- 2 Craig Smith  
Identity number 801215 7895 08 8  
unmarried  
(1/4 share)
- 3 Jemma Smith  
Identity number 831216 0059 08 8

unmarried  
(1/4 share)

their heirs, executors, administrators or assigns

## **Question 15 - Model answer**

**[6]**

According to section 48(1) a supplier must not -

- a) offer to supply, supply or enter into an agreement to supply any goods or services at a price or on terms that are unfair, unreasonable or unjust;
- b) market any goods or services, or negotiate, enter into or administer a transaction or an agreement for the supply of goods or services in a manner that is unfair, unreasonable or unjust; or
- c) 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 or 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.

According to section 48(2) an agreement, terms, condition or notice shall be unfair unreasonable or unjust if -

- 1) it is excessively one-sided and not in the favour of the consumer;
- 2) it is so adverse to the consumer as to be inequitable;
- 3) the consumer transacted to his detriment in relying on a false or misleading statement; or
- 4) the notice requirements of section 49 (which require pre-notification for certain types of onerous contract terms such as indemnities, waivers and exemption) were not complied with.

**TOTAL: [100]**





Compiled by

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**SOURCES**

Self-study Deeds Course for Attorneys  
The Consolidated Practice Manuals of the Deeds Office of South Africa  
Relevant acts, regulations and prescribed forms