

# Model Answers to the Conveyancing Examination

## September 2010

### Part 1

#### Self-Study Deeds Course

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#### Question 1 - Model answer

[10]

1.1.1

Prepared by me

CONVEYANCER  
Le Roux GJ

#### **Application in terms of Section 40 of the Deeds Registries Act 47 of 1937<sup>1</sup>**

We, the undersigned

- 1 Siphiso Nxumalo  
Identity number 550911 5203 08 0  
And  
Nonaindia Zuma  
Identity number 590130 0030 00 7  
married in community of property to each other
- 2 Sharon Cowley, in my capacity as trustee and duly authorised thereto by virtue of a resolution by the trustees of  
Irene Trust  
Registration number IT12/1992  
acting under letter of appointment issued by the Master of the North Gauteng High Court, Pretoria on 1 July 1992
- 3 Alice Botha, in my capacity as director and duly authorised thereto by virtue of a resolution by  
ABC (Proprietary) Limited  
Registration number 1986/000798/07

do hereby apply in terms of section 40 of the Deeds Registries Act 47 of 1937 to the Registrar of Deeds at Mpumalanga Nelspruit, for the issue to us of a Certificate of Consolidated Title in respect of -

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<sup>1</sup> See **Example 9 B** in Part 4 of Self -Study Deeds Course for Attorneys.

- 1) The Remaining Extent of Portion 8 of the Farm Lunsklip 105  
Registration Division J.T., Province of Mpumalanga

in extent 72,0000 (seventy two comma nought nought nought nought) hectares  
and

- 2) Portion 36 of the Farm Lunsklip 105  
Registration Division J.T., Province of Mpumalanga

in extent 3,2163 (three comma two one six three) hectares

Both properties held by deed of transfer T 10/1994

which properties on consolidation will be known as -

Portion 37 of the Farm Lunsklip 105  
Registration Division J.T., Province of Mpumalanga

in extent 75,2163 (seventy five comma two one six three) hectares

as will appear from consolidation diagram S.G. No A 2876/1994.

Signed at Mpumalanga in this 2 February 2006

\_\_\_\_\_  
S Nxumalo

\_\_\_\_\_  
N Zuma

\_\_\_\_\_  
On behalf of the trustees of Irene Trust

\_\_\_\_\_  
On behalf of ABC (Pty) Ltd  
[10]

**Certificate of Consolidated Title**<sup>2</sup>

issued under the provisions of section 40 of the Deeds Registries Act 47 of 1937

WHEREAS -

- 1 Siphiso Nxumalo  
Identity number 550911 5203 08 0  
And  
Nonaindia Zuma  
Identity number 590130 0030 00 7  
married in community of property to each other
- 2 the trustees of Irene Trust  
Registration number IT12/1992
- 3 ABC (Proprietary) Limited  
Registration number 1986/000798/07

have applied for the issue to them of a Certificate of Consolidated Title under the provisions of Section 40 of the Deeds Registries Act, 1937,

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<sup>2</sup> This certificate is drafted in accordance with form O. Also see **Example 9 D** in Part 4 of Self-Study Deeds Course for Attorneys.

AND WHEREAS they are the registered owners of –

- 1) The Remaining Extent of Portion 8 of the Farm Lunsklip 105  
Registration Division J.T., Province of Mpumalanga  
  
and
- 2) Portion 36 of the Farm Lunsklip 105  
Registration Division J.T., Province of Mpumalanga  
  
Both properties held by deed of transfer T 10/1994

which have been consolidated into the land hereinafter described.

NOW, THEREFORE, in pursuance to the provisions of the said Act, I the Registrar of Deeds at Mpumalanga, Nelspruit do hereby certify that the said -

- 1 Siphiso Nxumalo  
Identity number 550911 5203 08 0  
And  
Nonaindia Zuma  
Identity number 590130 0030 00 7  
married in community of property to each other
- 2 the trustees of Irene Trust  
Registration number IT12/1992
- 3 ABC (Proprietary) Limited  
Registration number 1986/000798/07

their heirs, executors, administrators or assigns, or their successors in office or assigns or its successors in title or assigns,

are the registered owners of -

Portion 37 of the Farm Lunsklip 105  
Registration Division J.T., Province of Mpumalanga

in extent 75,2163 (seventy five comma two one six three) hectares

as will appear from annexed consolidation diagram S.G. No. A 2876/1994.

**The property held hereunder is subject to the following conditions:**

- 1 The former Remaining Extent of Portion 8 of the Farm Lunsklip 105, measuring 72,0000 (seventy two comma nought nought nought nought) hectares, indicated by the figure ABCDEHJKLMNPQRA on the attached diagram SG No. A 2876/1994 <sup>3</sup> is subject to a right of way servitude, 6 (six) metres wide, in favour of Portion 2 of the Farm Moinooi 110, Registration Division J.T., Province of Mpumalanga, the centre

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<sup>3</sup> As this servitude only affects the Remaining Extent of Portion 8 of the Farm Lunsklip, this condition should be qualified to indicate this.

line of which servitude is indicated by the line xy on consolidation diagram S.G. no A 2876/1994, as will more fully appear from Notarial Deed of Servitude K593/1986 S.

And further subject to such conditions as are mentioned or referred to in the aforesaid deeds.<sup>4</sup>

AND THAT by virtue of these presents, the said Siphiso Nxumalo and Nonaindia Zuma, married as aforesaid, their heirs, executors, administrators or assigns, the trustees of Irene Trust, their successors in office or assigns and ABC (Proprietary) Limited, its successors in title or assigns, now is and henceforth shall be entitled thereto conformably to local custom, the State, however, reserving its rights.

In witness whereof I, the said Registrar, have subscribed to these presents, and have caused the seal of office to be affixed thereto.

Thus done and executed at the office of the Registrar of Deeds at Mpumalanga, Nelspruit on this \_\_\_\_ day of \_\_\_\_\_ .

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Registrar of Deeds

[20]

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<sup>4</sup> This general conditional clause is not applicable in the deeds registries for Cape Town, Pietermaritzburg, Vryburg and Bloemfontein.

**Consent to consolidation**

in terms of section 40(3) of the Deeds Registries Act 47 of 1937

I, the undersigned

Alicia Brandt in my capacity as signing official and duly authorised thereto by virtue of a resolution of the board of directors of  
Goforit Bank Limited  
Registration number 1960/001234/06

being the legal holder of the undermentioned bond, namely -

number B12/1994

passed by

1	Siphiso Nxumalo Identity number 550911 5203 08 0 and Nonaindia Zuma Identity number 590130 0030 00 7 married in community of property to each other
2	the trustees of Irene Trust Registration number IT12/1992
3	ABC (Proprietary) Limited Registration number 1986/000798/07

in favour of Goforit Bank Limited  
Registration number 1960/001234/06

for the amount of R5 000 000,00 (five million rand) and an additional sum of  
R1 000 000,00 (one million rand)

do hereby consent to –

1 the consolidation of the following properties, namely –

1) The Remaining Extent of Portion 8 of the Farm Lunsklip 105  
Registration Division J.T., Province of Mpumalanga

in extent 72,0000 (seventy two comma nought nought nought nought) hectares

and

- 2) Portion 36 of the Farm Lunsklip 105  
Registration Division J.T., Province of Mpumalanga

in extent 3,2163 (three comma two one six three) hectares

into the land described as -

Portion 37 of the Farm Lunsklip 105  
Registration Division J.T., Province of Mpumalanga

in extent 75,2163 (seventy five comma two one six three) hectares

as will appear from consolidation diagram S.G. No. A 2876/1994.

- 2 the substitution of the abovementioned component properties by the consolidated property as security under the bond.

Signed at Nelspruit on 6 February 2006.

As witnesses

1 \_\_\_\_\_  
2 \_\_\_\_\_

\_\_\_\_\_  
A Brandt obo Goforit Bank Ltd

### **Certificate of Registered Title**

issued under the provisions of section 43 of the Deeds Registries Act 47 of 1937

Whereas –

- 1 Siphiso Nxumalo  
Identity number 550911 5203 08 0  
and  
Nonaindia Zuma  
Identity number 590130 0030 00 7  
married in community of property to each other
- 2 the trustees of Irene Trust  
Registration number IT12/1992
- 3 ABC (Proprietary) Limited  
Registration number 1986/000798/07

have applied for the issue to them of a Certificate of Registered Title under section forty-three of the Deeds Registries Act, 1937, in respect of the under mentioned land, being portion of the land registered in their name held under Certificate of Consolidated Title T 25/2006;



Now therefore, in pursuance of the provisions of the said Act, the Registrar of Deeds at Mpumalanga, Nelspruit do hereby certify that the said

1 Siphiso Nxumalo  
Identity number 550911 5203 08 0  
and  
Nonaindia Zuma  
Identity number 590130 0030 00 7  
married in community of property to each other

2 the trustees of Irene Trust  
Registration number IT12/1992

3 ABC (Proprietary) Limited  
Registration number 1986/000798/07

their heirs, executors, administrators or assigns or their successors in office or assigns or its successors in title or assigns,

are the registered owners of –

Portion 45 (a portion of portion 37) of the Farm Lunsklip 105  
Registration Division J.T., Province of Mpumalanga

In extent 2,7814 (two comma seven eight one four) hectares

As will appear from annexed diagram S.G. 2129/2006 and held by Certificate of Consolidated Title T 25/2006.<sup>5</sup>

Subject further to such conditions as are mentioned or referred to in the aforesaid deeds.<sup>6</sup>

And that by virtue of these presents, the said Siphiso Nxumalo and Nonaindia Zuma, married as aforesaid, their heirs, executors, administrators or assigns, the trustees of Irene Trust, their successors in office or assigns and ABC (Proprietary) Limited, its successors in title or assigns, now is and henceforth shall be entitled thereto conformably to local custom, the State, however, reserves its rights.

In witness whereof I, the said Registrar, have subscribed to these presents, and have caused the seal of office to be affixed thereto.

Thus done and executed at the office of the Registrar of Deeds at Mpumalanga, Nelspruit on this \_\_\_\_ day of \_\_\_\_\_ .

\_\_\_\_\_  
Registrar of Deeds [20]

<sup>5</sup> As a new property is hereby created, form TT issued under the Deeds Registries Act is used for the wording of the extending clause.

<sup>6</sup> As there is no servitude note on the subdivisional diagram and there are no ancillary rights, the 6 metres right of way servitude does not affect this portion for which a CRT is now being taken out. Therefor the condition set out in the Certificate of Consolidated Title is omitted here. This general conditional clause is not applicable in the deeds registries for Cape Town, Pietermaritzburg, Vryburg and Bloemfontein.

### Power of Attorney to pass transfer

I, the undersigned,

Alice Botha, in my capacity as director and duly authorised thereto by virtue of a resolution by  
ABC (Proprietary) Limited  
Registration number 1986/000798/07

do hereby appoint Gabriel Jacobus le Roux and/or Erinda Frantzen with power of substitution to be my lawful attorney and agent to appear before the Registrar of Deeds at Mpumalanga Nelspruit and there and then declare that we did on 22 June 2010 sell to -

- 1 Siphiso Nxumalo  
Identity number 550911 5203 08 0  
and  
Nonaindia Zuma  
Identity number 590130 0030 00 7  
married in community of property to each other
- 2 the trustees of Irene Trust  
Registration number IT12/1992

for the amount of R 3 000 000,00 (three million rand), the following property, namely –  
1/3 (one third) share in and to –  
Portion 45 (a portion of portion 37) of the Farm Lunsklip 105  
Registration Division J.T., Province of Mpumalanga  
In extent 2,7814 (two comma seven eight one four) hectares

Held by Certificate of Registered Title T 32/2007<sup>7</sup>

Signed at Pretoria on this the 15 th day of September 2010

As Witnesses:

- 1 \_\_\_\_\_
- 2 \_\_\_\_\_

\_\_\_\_\_  
obo ABC (Pty) Ltd  
[15]

<sup>7</sup> The model answers of LEAD here refers to “ ...held by Certificate of Registered Title to be registered”. This is not correct, as the question clearly mentions the number of the Certificate of Registered Title. It cannot refer to another Certificate of Registered Title that will for example be issued in terms of section 34 simultaneously with the transfer, as it is not obligatory in this instance to first take out a Certificate of Registered Title for the 1/3 share.

**Consent to substitution**

issued under the provisions of section 57 of the Deeds Registries Act, 1937

Whereas I,

Shai Summerton, in my capacity as signing official and duly authorised thereto by virtue of a resolution of –  
Backbreak Bank Limited  
Registration number 1980/004125/06

am the legal holder of –

mortgage bond

B 19/2007

passed by

- 1 Siphiso Nxumalo  
Identity number 550911 5203 08 0  
and  
Nonaindia Zuma  
Identity number 590130 0030 00 7  
married in community of property to each other
- 2 the trustees of Irene Trust  
Registration number IT12/1992
- 3 ABC (Proprietary) Limited  
Registration number 1986/000798/07

for the sum of

R10 000 000,00 (ten million rand) plus an additional amount of R2 000 000,00 (two million rand)

whereby was hypothecated as a first mortgage certain –

Portion 45 (a portion of portion 37) of the Farm Lunsklip 105  
Registration Division J.T., Province of Mpumalanga  
In extent 2,7814 (two comma seven eight one four) hectares

Held by Certificate of Registered Title T 32/2007;<sup>8</sup>

And whereas the said ABC (Proprietary) Limited, Registration number 1986/000798/07 has transferred 1/3 (one third) share in and to the aforesaid land to –

<sup>8</sup> The model answers of LEAD is here outdated, as it still refers to the fact that the full amount of the bond is still outstanding. This form W has been amended by GK R292 of 2010 by the omission to this reference.

1 Siphiso Nxumalo  
Identity number 550911 5203 08 0  
and  
Nonaindia Zuma  
Identity number 590130 0030 00 7  
married in community of property to each other

2 the trustees of Irene Trust  
Registration number IT12/1992  
who are ready and willing to take over the liability of the said ABC (Proprietary) Limited,  
Registration number 1986/000798/07 under the said bond and to be substituted for the said  
Transferor as the debtor under the bond;

Now therefore, I agree under the provisions of the said Act, that the transferees aforesaid  
shall be substituted as debtor under the bond and that from the date of execution of the  
transfer the transferor shall; be released from any obligation under the said bond.

Dated at Nelspruit this 9<sup>th</sup> day of September 2010  
As witnesses:

1 \_\_\_\_\_  
2 \_\_\_\_\_

\_\_\_\_\_ Obo Backbreak Bank Limited

And we,

1 Siphiso Nxumalo  
Identity number 550911 5203 08 0  
And  
Nonaindia Zuma  
Identity number 590130 0030 00 7  
married in community of property to each other

2 Sharon Cowley, in my capacity as trustee and duly authorised thereto by virtue of a  
resolution by the trustees of  
Irene Trust  
Registration number IT12/1992  
acting under letter of appointment issued by the Master of the North Gauteng High  
Court, Pretoria on 1 July 1992

the transferees aforesaid, having read the above consent of the legal holder of the bond, do  
hereby consent to accept transfer of the land subject to such bond and to be substituted for  
the transferor as debtor thereunder and hereby assume full liability for the indebtedness under  
the said bond in terms of the provisions of the said Act.

Dated at Nelspruit this 9<sup>th</sup> day of September 2010  
As witnesses:

1 \_\_\_\_\_ S Nxumalo  
2 \_\_\_\_\_ N Zuma  
\_\_\_\_\_ S Cowley obo Irene Trust  
[15]

## Question 2 – Model answer

[40]

- 2.1 Transfer duty is payable on the fair value of the immovable property acquired. Thus transfer duty must be calculated in the amount of R 1 500 000,00 minus the furniture to the value of R 200 000,00, i.e. on the amount of **R1 300 000,00**.

0% on the first R500 000,00	= R	0,00
5% on the second R500 000,00	=	R25 000,00
8% on R300 000,00	=	<u>R24 000,00</u>
<b>TOTAL TRANSFER DUTY PAYABLE</b>	=	<b>R49 000,00</b>

## 2.2

<b>Purchaser: Richie Rich</b> <b>Final Statement of Account – Purchase of Erf 2 Krypton Township</b>			
To	Purchase Price	1 500 000,00	
By	Bond from Whobbly Bank Limited		1 200 000,00
To	Our transfer fee	12 000,00	
To	VAT on our transfer fee	1 680,00	
To	Transfer duty	49 000,00	
To	Our bond registration fee	7 600,00	
To	VAT on our bond registration fee	1 064,00	
To	Deeds office fee for transfer	1 000,00	
To	Deeds office fee for bond registration	500,00	
To	Postage & petties for transfer	307,02	
To	VAT on postage & petties for transfer	42,98	
To	Postage & petties for bond registration	307,02	
To	VAT on postage & petties for bond	42,98	
By	Contribution towards costs by seller		10 000,00
To	Admin fee for clearance certificate <sup>9</sup>	50,00	
To	Pro rata rates & taxes for 1-31 May 2010	1 000,00	
By	Received from you		500 000,00
To	Occupational rental for February 2010	15 000,00	
To	Occupational rental for March 2010	15 000,00	
To	Occupational rental for April 2010	15 000,00	
By	Interest on investment		<u>7 500,00</u>
	Total	1 619 594,00	
	Due to purchaser	<b>97 906,00</b>	
	Balances	<b>1 717 500,00</b>	<b>1 717 500,00</b>
<b>Due to Purchaser</b>			<b>R 97 906,00</b>

<sup>9</sup> In the modelanswers of LEAD this amount is incorrectly debited in the account of the seller.



**Question 3 – Model answer**

**[15]**

Prepared by me

CONVEYANCER  
Frantzen E

**Application to record a contract in terms of Section 20 of the Alienation of Land Act 68 of 1981**

I the undersigned

Pieter Uys  
Identity Number: 650115 5879 08 8  
Unmarried

do hereby make oath and say

- 1 The hereinafter mentioned land was sold in terms of a contract as defined in the Alienation of Land Act, 1981 (Act 68 of 1981), to the hereinafter mentioned purchaser on 22 June 2010;
- 2 I do hereby make application to the Registrar of Deeds at Pretoria to record the contract against the title deed of the land in terms of Section 20 of the said Act;
- 3 I do hereby confirm that to the best of my knowledge there is no prior contract in force that is required to be recorded against the title deed in question.

Particulars of land and purchaser

**The registered owner:**

- a) Pieter Uys  
Identity Number: 650115 5879 08 8  
Unmarried

**Description of the land:**

- b) Erf 78 Danville Township  
Registration Division J.R., Gauteng Province  
Measuring 1 200 (one thousand two hundred) square metres  
Held by Deed of Transfer T1234/1999

**Purchaser:**

- c) Hector Winfield  
Identity Number 560113 5006 08 2  
Married, which marriage is governed by the laws of France

\_\_\_\_\_  
Pieter Uys

I certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn before me at Pretoria on 9 September 2010

\_\_\_\_\_  
Commissioner of Oaths  
(Full names, address and capacity)

CONTRACT RECORDED ON..... BY THE REGISTRAR OF DEEDS AT  
PRETORIA

\_\_\_\_\_  
REGISTRAR OF DEEDS

**Question 4 – Model answer**

4.1

**[35]**

Prepared by me

CONVEYANCER  
Frantzen E

**Power of Attorney to pass bond**

I, the undersigned,

Sibongile Jane Gumede

Born on 10 November 1993

a minor

duly assisted by her parents and natural guardians Michael Gumede and Miriam Gumede

do hereby nominate, constitute and appoint

Erinda Frantzen and/or Gabriël Jacobus le Roux

with power of substitution to be my lawful attorney and agent and in my name, place and stead –

- 1 to appear before the Registrar of Deeds at Pretoria and there and then as my act and deed to register and execute a mortgage bond for the amount of R10 000,00 (ten thousand rand), together with the sum of R2000,00 (two thousand rand) to cover contingent costs to and in favour of –

Joanna Brown

Identity number 490107 0085 082

Widow

her heirs, executors, administrators or assigns

in accordance with the concept mortgage bond attached hereto and signed by the mortgagor and the two witnesses for identification purposes, specially hypothecating the property therein described;

- 2 to make all such alterations, additions and deletions in the said mortgage bond as may be required for the purposes of registration thereof; and

- 1 generally to do whatsoever may be necessary to make the said mortgage bond as valid and effectual as I could do if personally present and acting herein; and I hereby ratify, allow confirm and agree to ratify, allow and confirm all and whatsoever that the said attorneys shall lawfully do or cause to be done in terms of this power of attorney

Signed at Pretoria on 9 September 2010

As witnesses

1 \_\_\_\_\_

\_\_\_\_\_  
Sibongile Jane Gumede

2 \_\_\_\_\_

\_\_\_\_\_  
Michael Gumede

\_\_\_\_\_  
Miriam Gumede



## Mortgage Bond

Be it hereby made known that

Erinda Frantzen

appeared before me, Registrar of Deeds at Pretoria, she being duly authorised thereto by virtue of a power of attorney executed at Pretoria on  
and granted to her by

Sibongile Jane Gumede

Born on 10 November 1993

a minor

duly assisted by her parents and natural guardians Michael Gumede and Miriam Gumede

(hereinafter referred to as the Mortgagor)

And the appearer declared that the mortgagor is lawfully and truly indebted and held and firmly bound to and on behalf of –

Joanna Brown  
Identity number 490107 0085 082  
Widow  
(hereinafter referred to as the Mortgagee)

her heirs, executors, administrators or assigns

in the sum of R10 000,00 (ten thousand rand) being the capital sum arising from and being for the balance of the purchase price due by the mortgagor to the mortgagee in respect of the property mortgaged hereby, subject to the continuing covering clause as more fully set out below; and

R2 000,00 (two thousand rand) being the additional sum further described and subject to the cost clause below

And the appearer declared in behalf of the mortgagor that this bond shall be subject to the following terms and conditions:

**1 Continuing covering security**

This bond shall be a continuing covering security for the capital sum and for all amounts that may be owed to the mortgagee now or in the future, including future debts in terms of this bond.

The mortgagee may advance further amounts to the mortgagor, or the capital or such portion of it as was previously repaid may be re-advanced, on the understanding that the total amount of all advances may not exceed the capital sum.

**1 Interest and repayment**

2.1 The capital sum of the bond or the balance remaining owing from time to time and any other charges due in terms of this bond, shall bear interest at the rate of 10% (ten percent) per annum, which interest shall be reckoned from the date of registration hereof to the end of the month during which this bond is registered and thereafter from the first day of each and every succeeding month.

2.2 Interest reckoned from the date of registration of this bond to the end of the month during which this bond is registered, shall be payable on registration hereof and thereafter interest shall be payable monthly in advance commencing from the first day of the month following the registration of this bond

2.3 Any interest unpaid at the commencement of any month shall be capitalised and form part of the capital sum due in terms hereof.

2.4 The rate of interest shall be revised annually and confirmed in writing by the mortgagee to the mortgagor. The rate shall, however, never be higher than the prime lending rate as determined by Help-U-Bank Limited, Registration number 1960/001234/06.

2.5 Notwithstanding anything to the contrary contained herein, the capital and interest, together with costs and other charges shall be paid in full by not later than the expiry of a period of 3 (three) years reckoned from the date of registration hereof.

2.6 All payments under this bond shall be applied in the first instance towards interest and other charges due and thereafter towards the reduction of the capital sum.

2.7 All payments in terms of this bond shall be made free of exchange at Pretoria.

### **3 Additional amount (cost clause)**

All future advances, debts or demands (over and above the capital sum and interest thereon) which may lawfully be secured and recovered in respect of this bond, in respect of premiums of insurance, expenses and any notice, charges incurred in suing for the recovery of any sum due hereunder, money disbursed for government fees and taxes and other charges and costs which may arise out of or in connection with this bond, together with interest thereon, as hereinafter stated, shall be limited to a sum not exceeding the sum of R2 000 (two thousand rand) (being the additional sum) over and above the capital sum.

### **4 Acceleration clause**

Should the mortgagor fail to effect any payment timeously or if the mortgagor defaults in the observance or performance of any conditions of this bond or any obligation or liability to the mortgagee on the due date thereof or to pay on demand any sum which may be legally claimable by the mortgagee, then the full amount of the capital outstanding together with all interest legally claimable under this bond shall immediately, without any notice become due and payable. The mortgagee may in such event forthwith proceed with the recovery thereof, together with all interest and such other moneys as may become due under and by virtue hereof and to have to mortgaged property declared executable accordingly.

### **5 Maintenance & inspection**

The mortgagor shall, as long as any amount secured by this bond remains unpaid, keep all buildings and erections on the mortgaged property in good and habitable order.

The mortgagee or his duly authorised agent shall be entitled at all reasonable times to enter upon and inspect the mortgaged property, for purposes of ascertaining if the aforesaid condition of keeping the buildings and erections on the mortgaged property in good and habitable order, is being fully complied with.

**6 Insurance**

The mortgagor shall insure all buildings and erections on the property hereby mortgaged and keep them insured for the sum and in an insurance office approved by the mortgagee against risk of loss or damage from fire and any other risk which the mortgagee shall at any time direct and shall cede the policy or policies to the mortgagee as collateral security for all indebtedness hereunder.

All moneys received under any insurance hereunder shall in the sole discretion of the mortgagee be wholly or partially employed either in partial or full payment of the indebtedness of the mortgagor hereunder or in the restoration under such conditions as the mortgagee may lay down, of that which has been damaged or destroyed by any causes covered by the aforesaid policies.

**7 Rates & taxes, premiums and other charges**

Should any licences, rates, fees, taxes, premiums and other charges levied and to be levied not be paid on the due date, or the building and erections not be kept in good and habitable order the mortgagee may pay any amount so claimed and do or cause to be done any repairs to be done, on behalf of the mortgagor, and any moneys so disbursed with interest thereon shall be chargeable to the mortgagor and payable by the mortgagor to the mortgagee on demand or, at the discretion of the mortgagee, be added to and immediately form part of the capital amount secured by this bond.

**8 Proof of indebtedness**

A certificate signed by the mortgagee, stating the amount due and payable at any time hereunder shall be *prima facie* proof of the facts stated therein

**9 Domicilia**

Any notice or other document to be given or sent under this bond shall be regarded for all purposes as having been received by the mortgagor if addressed to the mortgagor or delivered at the property hereby mortgaged, which place the mortgagor hereby chooses as the mortgagor's *domicilium citandi et executandi* for all processes to be served under this bond.

**10 Jurisdiction of magistrate's court**

The mortgagor consents in terms of section 45 of the Magistrate's Court Act 32 of 1944 to the mortgagee taking any legal proceedings for enforcing any of its rights under this bond for the recovery of moneys claimable under this bond or otherwise, in the magistrate's court for any district having jurisdiction in respect of the mortgagor by virtue of section 28(1) of the aforesaid Act.

And as security of the above obligations the appearer, on behalf of the mortgagor, declares to bind specially as a *first mortgage* the following property:

Erf 123 Lynnwood Township  
Registration Division J.R., Province of Gauteng

Measuring 800 (eight hundred) square metres

Held by deed of transfer to be registered

Subject to all such conditions as referred to in the aforesaid deed

In witness whereof I, the said Registrar of Deeds, together with the appearer have signed this deed and affixed my seal of office thereon

Thus done and executed at the office of the Registrar of Deeds at Pretoria on \_\_\_\_\_

\_\_\_\_\_  
qq Appearer

In my presence

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

- 4.2**
- 1 Power of attorney to pass the bond, together with the attached concept mortgage bond.
  - 2 Consent by the Master of the High Court to the registration of the bond, endorsed on the back of the power of attorney.
  - 3 If only one of the parents (and guardians) assisted the minor in the signature of the power of attorney, a separate consent by the other parent must be lodged simultaneously with the registration of the bond.
  - 4 A conveyancer certificate or affidavit by the mortgagor that no identity document has been issued to the mortgagor would have been lodged by the transfer attorney and there is no need for duplication of this in the lodgement of the bond.

5.1

Prepared by me

CONVEYANCER  
Frantzen E

**Application under Section 11(1)**<sup>10</sup>  
of the Sectional Titles Act, 95/1986

I, the undersigned,

Gerhard Green

in my capacity as director and duly authorised hereto by a resolution of the directors of  
ABC (Proprietary) Limited

Registration number: 1990/000123/07

do hereby apply to the Registrar of Deeds at Cape Town 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 the provisions of section 12(1)(a) of the aforesaid act, in respect of the scheme known as Greenacres, S.G. No D954/2010 and held by deed of transfer T849/2006;
- 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; and
- 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 provisio in terms of section 25(1); and
- 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 a right of exclusive use referred to in section 27(1).

Signed at Cape Town on 15 September 2010.

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G Green obo ABC (Pty) Ltd  
[5]

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<sup>10</sup> The application is drafted in accordance with the prescribed form B of annexure 1 to the Sectional Titles Act, 1986.

**Consent to the opening of a Sectional Title Register**

in terms of the provisions of Section 11 (3)(d) of the Sectional Titles Act

I, the undersigned,

Johan van Zyl, in my capacity as assistant general manager acting under and by virtue of the resolution of the board of directors of

Best Bank Limited

Registration number 1905/001225/06

(hereinafter referred to as the Bank)

legal holder of the undermentioned bond namely:

mortgage Bond No: B8947/2006

passed by: ABC (Proprietary) Limited

Registration number 1990/000123/07

in favour of: Best Bank Limited

Registration number 1905/001225/06

for the sum of: R1 500 000,00 (one million five hundred thousand rand)

plus an additional sum of: R 300 000,00 (three hundred thousand rand)

DO hereby consent to –

- 1 The opening of a sectional title register in terms of the provisions of section 12(1)(b) of the Sectional Titles Act 1986;
- 2 Registration of the sectional plan in terms of the provisions of section 12(1)(a) of the Sectional Titles Act 1986 in respect of the land and building known as Greenacres and situated at :-
  - Erf 5768 Houghton
  - situated in the City of Cape Town, Cape Division, Province Western Cape
  - Measuring: 8 800 (eight thousand eight hundred) square metres
  - Held by deed of transfer T849/2006
- 3 The endorsement of the said bond to the effect that it attaches to –
  - i) the sections and common property shown on the sectional title plan;
  - ii) The certificate of real right in respect of the right reserved by the Developer in terms of section 25(1) of the Act;
  - iii) the certificate of real right in respect of the exclusive use areas in terms of section 27(1) of the Act.

Signed at Cape Town on 15 September 2010.

As Witnesses:

1 \_\_\_\_\_

2 \_\_\_\_\_

\_\_\_\_\_  
Johan van Zyl obo Best Bank Limited

[10]

### 5.3

The terms of the conventional bond must be varied by applying the provisions of section 3(1)(s) of the Deeds Registries Act, in order to comply with the requirements of a sectional title covering mortgage bond, making provision for –

- 1 the variation of the insurance clause
- 2 the addition of a clause to provide for payment of levies;
- 3 the addition of a clause
  - 3.1 entitling the mortgagee to deal with the body corporate to the exclusion of the mortgagor if it should deem fit; and
  - 3.2 giving the mortgagee specific power to act on the mortgagor's behalf in dealing with the body corporate
- 4 the addition of definitions to define specific words. [5]

**TOTAL [200]**



# Model Answers to the Conveyancing Examination

## September 2010

### Part 2

#### Self-Study Deeds Course

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#### **Question 1 - Model answer** **[4]**

- 1.1.1**
- 1 Certificate of incorporation
  - 2 Certificate to commence business
  - 3 Memorandum and articles of association
  - 4 Resolution by the directors of the company, ratifying the terms of the pre-incorporation agreement. [4]

**1.1.2** The memorandum of association must contain as an object the ratification or adoption of or the acquisition of rights and obligations in respect of pre-incorporation contracts. Two copies of such an pre-incorporation contract (of which one must be certified as a true copy by a notary) must have been lodged together with the memorandum and articles of association at the companies office. The resolution ratifying the pre-incorporation contract, must have been duly passed and minuted. [3]

**1.1.3** If the memorandum of association does not contain as object the ratification of pre-incorporation contracts, such contract will be null and void. The agent (trustee) acting on behalf of the company to be formed in entering into the pre-incorporation contract will also not be personally held liable. [2]

**1.2** Yes. I will insert a clause that stipulates that the representative of the company to be formed will be liable in his personal capacity -

- if the company is not established within a specified period; or
- if it is established, but does not ratify and implement the contract.

I will further bind the representative as surety in respect of the obligations in terms of the pre-incorporation contract. [3]

## Question 2 – Model answer

[2]

No. Section 28(2) provides that any alienation which does not comply with the provisions of section 2(1) shall in all respects be valid *ab initio* if the purchaser –

- a) had performed in full in terms of the deed of alienation or contract; and
- b) the land in question has been transferred to the purchaser.

## Question 3 – Model answer

[3]

Transfer duty must first be calculated on the value of the whole property and thereafter apportioned in accordance with the share that has been acquired. In other words transfer duty must be calculated on the amount of R2 200 000,00, namely –

First R500 000,00 is exempt	= R 0,00
Next R500 000,00 x 5%	=R 25 000,00
8% over R1 million rand (on R1 200 000,00)	<u>=R 96 000,00</u>
	<b>=R121 000,00</b>

**Transfer duty payable of ½ share:**

½ x R121 000,00 =R60 500,00

## Question 4 – Model answer

[5]

The following documents must, inter alia, be submitted to the Master –

- 1 the **application form JM33** (duly completed and signed by the executor);
- 2 the **written consent(s)** to the sale from all the *heirs* (if the property was sold by the deceased during his lifetime, the consent by the heirs is not necessary);
- 3 If the property was **sold by public auction**, proof that the sale was properly advertised and attended and that the purchase price is fair and reasonable;
- 4 the certified copy of the **deed of sale**;
- 5 the **power of attorney** to receive the Master's endorsement.

## Question 5 – Model answer

[8]

**In respect of the section**

- 1 X must obtain the consent of the trustees of the body corporate to subdivide his section – (section 21(1)).
- 2 Thereafter he must appoint a land surveyor or architect to prepare the draft sectional plan of the proposed subdivision.
- 3 Subsequently he must apply to the Surveyor-General for the approval of the draft sectional plan of subdivision.
- 4 After approval of the draft sectional plan he must apply to the Registrar of Deeds for the registration of the sectional plan of subdivision – (section 22).
- 5 If the unit is mortgaged, the bond as well as the consent of the mortgagee to –
  - the cancellation of the bond; or
  - the release of the section from the bond; or

- the subdivision and substitution of the new sections in lieu of such section as security under the bond,  
must be lodged together with the application for the registration of the sectional plan of subdivision.
- 6 A new Certificate of Registered Sectional Title will be issued by the Deeds Registry in respect of each of the two new, smaller units.

#### **In respect of the exclusive use area**

The Sectional Titles Act does not provide for the subdivision of exclusive use areas and therefore the garden area cannot be subdivided. The existing exclusive use area will have to be cancelled, in which event it such area will revert back to the body corporate. Two smaller exclusive use areas (garden areas) will then have to be re-delineated where after it can be ceded by the body corporate to X and Y respectively by means of bilateral notarial deeds of cession. This obviously needs to be arranged with the body corporate.

#### **Question 6 – Model answer**

**[4]**

Yes, it can. Transfer of **all** the properties held by one deed of transfer can be transferred to the State by means of an endorsement in terms of section 16 of the Deeds Registries Act. As only one of the properties held by the deed of transfer has to be transferred, a certificate of registered title for that specific property must be taken out by means of an application by the registered owner thereof, in terms of section 36, where after transfer can be effected in terms of section 16. Both the issue of the certificate of registered title as well as the transfer will be for the account of the State.

#### **Question 7 – Model answer**

**[3]**

No, it is not. Where a document was signed outside the Republic of South Africa for use inside the Republic, the signature on such a document must be duly authenticated, in terms of Rule 63 of the High Court Rules by the signature and seal of –

- a) The head of a South African diplomatic or consular mission in that country; or
- b) any government official of the foreign country in question who is authorised to authenticate documents in that country; or
- c) any person of that foreign country who can prove by a certificate, issued by a person mentioned in a or b above, to be duly authorised to authenticate such document; or
- d) a notary public of Britain, Northern Ireland, Botswana, Lesotho, Swaziland or Zimbabwe, for certification of a document in one of these countries.

#### **Question 8 – Model answer**

**[2]**

- 1 Waiver of builder's lien
- 2 Cession of contractor's all risk policy

**Question 9 – Model answer****[3]**

The trust must be registered with the Master of the High Court and a letter of appointment must be issued by such Master, wherein the trustee(s) for the trust are appointed. The Master will not issue such letter of appointment if the trustees have not provided security to the satisfaction of the Master, unless the trustees are exempted from the provision of security.

**Question 10 – Model answer****[3]**

**10.1** No. The definition of sale/sold, includes a sale subject to a suspensive condition and is thus a violation of section 3(e) of the Subdivision of Agricultural Land Act. [1]

**10.2** No. Section 6A of the Subdivision of Agricultural Land Act only allows for the registration of a life-long usufruct over agricultural land if it is in favour of a person and his spouse, or the survivor of them, who are married in community of property to each other, without the consent of the Minister. [2]

**Question 11 – Model answer****[2]**

No, transfer may only be effected to the purchaser in the contract which has been recorded against the title deed of the property. The contract will therefore first have to be cancelled in terms of the Alienation of Land Act, before transfer can be effected to B.

**Question 12 – Model answer****[2]**

No. In terms of section 15(2) of the Matrimonial Property Act 88 of 1984, the prior written consent of the spouse of A is required for such surety by A.

**Question 13 – Model answer****[13]**

**13.1** 1 Founding Statement of the close corporation (CK 1), which also is the certificate of incorporation for such close corporation.

2 Resolution by the members of the close corporation ratifying the pre-incorporation contract and authorising one of its members to sign all necessary documents to give effect to the transfer of the property. [4]

**13.2.1** Adam Smith, in his capacity as representative (trustee) of a close corporation to be formed (hereinafter referred to as the purchaser). [2]

**13.2.2** The representative hereby undertakes that he will as a matter of urgency make the necessary arrangements to register the purchasing close corporation, with one of its main objects the adoption and ratification of this agreement, with or without modification and that, in the event of -

a) the close corporation not being registered within 21 (twenty one) days from the date of signature of this deed of sale, or within such further

extended period as shall be mutually agreed upon in writing between the seller and the purchaser; or

- b) the close corporation having been registered, but failing to adopt and ratify this agreement within 7 days thereafter,

then and in such event, the trustee shall be regarded as personally bound and liable in terms of this agreement, in the same way as if his name and not the name of the close corporation has been given as the purchaser herein.

Upon incorporation and ratification as aforesaid, the trustee, by his signature binds himself as surety and co-principal debtor *in solidum* with the close corporation for the due performance by the close corporation of all its obligations in terms of this agreement.

## **Question 14 – Model answer**

**[6]**

### **Transfer duty**

The scales according to which transfer duty is payable are different for a natural person than for a juristic person. A natural person will pay far less transfer duty than a juristic person for the acquisition of the same property.

### **Capital gains**

If a natural person sells his primary residence, then the first R1 500 000,00 of his profit will be exempt from the payment of capital gain tax. If he is not selling his primary residence, capital gains tax will be payable but the rates are less for a natural person than for a company.

In the event that a company sells property, capital gains will always be payable, as the exemption does not apply to companies. The percentage that must be added to the income of the company on which it has to pay income tax is higher for a juristic person than for a natural person.

## **Question 15 – Model answer**

**[3]**

**15.1** No. Any public benefit organization which has as its sole or principal object the carrying on of any public benefit activity, and which has received exemption from the payment of income tax and which acquires the whole or substantially the whole property to be used for the purposes of one or more public benefit activity carried on by such organization, is not liable to pay transfer duty on the acquisition of such immovable property. [1]

**15.2** An affidavit must be lodged with the Receiver of Revenue setting out the purpose for which the property is being acquired and confirming that the organization is of a public character. A transfer duty exemption certificate must be lodged with the Registrar of Deeds. [2]

**Question 16 – Model answer** [4]

Movable property, not forming part of the estate of the deceased may be introduced for the purposes of equalising the division in terms of a redistribution agreement – (section 14(1)(b)(iv) of the Deeds Registries Act)

**Question 17 – Model answer** [4]

**17.1** Yes. A has been automatically rehabilitated after 10 years from date of his sequestration, that is after 2000. No act of registration is required in the deeds registry to indicate that the property has re-vested in A. [2]

**17.2** Yes. He must however obtain the consent of the Master of the High Court in terms of section 80*bis* of the Insolvency Act 24 of 1936. The provisional trustee must make written recommendations to the Master, stating reasons for his recommendations. If the property is subject to a right of preference, the Master may not authorise the sale unless the person who as the right of preference has given his consent or he has been guaranteed against loss. [2]

**Question 18 – Model answer** [8]

**18.1** Section 26(3) makes provision that the provisions of section 26(1) shall not apply under certain circumstances, in other words consideration may be received –

- a) if the seller entrusts to a practitioner or an estate agent in his capacity as such a consideration to be kept, for the benefit of the purchaser in terms of that deed of alienation, in the trust account of the practitioner or estate agent; or
- b) the seller, before such payment, furnishes the purchaser with an irrevocable and unconditional guarantee by a banking institution or a registered insurer in terms of which the said banking institution or registered insurer undertakes to repay the said amount to the purchaser if the unit is not registrable. [5]

**18.2** Section 26(1) provides, *inter alia*, that no person shall by virtue of a deed of alienation that is a contract required to be recorded in terms of section 20, receive any consideration until such recording has been effected in the deeds registry. [3]

**Question 19 – Model answer** [10]

- 1 Do a company search at the companies' office to ascertain that the company has not been de-registered, liquidated or placed under judicial management.
- 2 Peruse the memorandum and articles of association of the company regarding the object(s) of the company and if there are any restrictions placed on the plenary power (which includes the borrowing powers) of the company.
- 3 Obtain the certificate of incorporation of the company.
- 4 Obtain the certificate to commence business of the company.

- 5 Obtain an affidavit from the director of the company confirming -
  - the names of all the directors;
  - that the loan is not a contravention of any of the provisions of the Companies Act;
  - that the company is not in liquidation and that there is no pending application for the liquidation of the company;
- 6 Obtain a certificate by the auditor of the company, confirming the facts set out in the affidavit by the director referred to in 5 above.
- 7 Obtain a resolution by the directors of the company and if necessary, the shareholder (if section 228 is for example applicable).

**Question 20 – Model answer**

**[3]**

- 20.1** It is not necessary to take out a Certificate of Registered Title for the share of Tim Oaks, provided the two transfers are registered simultaneously. [1]
- 20.2** He has to take out a certificate of registered title for his share in the property in terms of section 34 of the Deeds Registries Act, as he is transferring a fraction of his share. [1]
- 20.3** He first has to take out a certificate of registered title in terms of the provisions of section 34 of the Deeds Registries Act, before the bond can be registered over his undivided share. [1]

**TOTAL: [100]**

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**SOURCES**

Self-study Deeds Course for Attorneys

Model Answers of LEAD

The Consolidated Practice Manuals of the Deeds Office of South Africa

Relevant acts, regulations and prescribed forms

Registrar's Conference Resolutions