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INTRODUCTION

Aim of the course

This course in 'Property Law and Conveyancing' focuses on the tasks that the conveyancer carries out and the workings of the Deeds Offices in South Africa.

If you either presently work in the field of conveyancing, or would like to do so, you will benefit from this course by learning how to perform more efficiently in your workplace. If you are presently employed in a related field, for example, banking or real estate, you will also benefit from this course by acquiring a basic knowledge of deeds registration and the work that the conveyancer performs.

The Deeds Offices and Registrar of Deeds

The deeds offices have been established in terms of the Deeds Registries Act 47 of 1937, which we will refer to in this study guide as 'the Act'.

The deeds office is a government office responsible for registering ownership and other rights in land, maintaining and managing a property registry and records for South Africa, as well as providing land registration information to the public.

There are 10 Deeds Offices in South Africa, with the head office of the Chief Registrar of Deeds in Pretoria, and other offices in Johannesburg, Cape Town, Pietermaritzburg, Bloemfontein, Kimberley, Vryburg, Mpumalanga, King William’s Town and Umtata; each serving their specific area.

The public can access information from the Deeds Office records, such as establishing property details (e.g. ownership, registered bond, purchase price), obtaining copies of title deeds or antenuptial contracts.

The Registrar of Deeds examines all submitted deeds and documents for execution or registration in terms of the Deeds Registries Act or any other law. He must also reject those deeds or documents where an objection to their execution or registration exists. A Registrar must exercise great care and discretion in carrying out his functions and is assisted by his staff in ensuring that all deeds that are registered are legally and factually correct.

Note

A Registrar of Deeds is not responsible for ensuring that the necessary financial arrangements have been made for any transaction which he registers. This freedom of the Registrar from all the financial implications of the deeds which he registers is fundamental to the South African system. It is the conveyancer’s responsibility to ensure that the financial arrangements have been made.

What is a conveyancer?

A conveyancer is an attorney who specialises in the preparation of deeds and documents which by law or custom are registrable in a deeds office. A conveyancer has passed a practical examination and has been admitted as a conveyancer by the High Court of South Africa.

The work of a conveyancer and his assistants requires a knowledge and skilled application of the relevant laws, as well as accuracy and attention to detail.
Land survey

An efficient system of registering title to land would be impossible unless each registered unit of land was surveyed and represented on a diagram or general plan.

Only registered land surveyors are permitted to prepare diagrams and general plans. A Surveyor-General’s office exists in each province and a Surveyor-General must approve or certify the diagram prepared and signed by a land surveyor.

A diagram contains descriptive information about the extent of a piece of land. It forms the basis for registration of a right to the land. A general plan is a document showing the relative position of two or more pieces of land together with the same essential information in respect of each piece as is required on a diagram, eg for a new township development.

A diagram will give you the following information about a piece of land:

- the description of the unit;
- the extent (or area) of the unit;
- the boundaries of the unit;
- the description of the beacons marking the unit;
- the co-ordinates fixing the position of the beacons; and
- the description and position of any servitude (a right in the property which a person other than the owner has) which affects the unit.

Please refer to Annexure C. You should be able to identify all of the above items in Annexure C.

It is not necessary to repeat the description of the boundaries mentioned in the diagram in the title deed (the document proving ownership to land), as long as there is a reference to the diagram in the deed. The diagram is the deciding factor in determining the boundaries of the unit and the title deed simply repeats the description used in the diagram.

Deeds office and diagrams

The record of properties therefore deals with:

- Information regarding the property as recorded in the deed of transfer registered in the Deeds Registry.
- A diagram or general plan on which the property is plotted, filed in the office of the Surveyor-General.
THE AGREEMENT OF SALE

A transfer of ownership of property usually begins with the sale of the property, thus we will look at the agreement of sale.

In terms of the Alienation of Land Act, agreements for the sale of immovable property or rights in immovable property must be in writing and signed by both the seller and the purchaser, either personally or by their authorised agents. Verbal agreements for the sale of immovable property are unenforceable.

Signing the agreement of sale

The parties to the agreement, or an agent authorised in writing to sign on their behalf, must sign the agreement at the end thereof and must initial each page. The parties should initial any cancelled or amended clauses.

Note that anybody signing the deed as an agent on behalf of another must disclose the full name and details of the principal on the same day as signing the documents. If the agent’s details are not disclosed in this manner, it is taken to be two separate transactions – namely a sale to the agent and thereafter a second sale from the agent to the principal, thus transfer duty is levied on both transactions. When dealing with an auction, the principal should be disclosed immediately upon acceptance by the auctioneer.

No witnesses are necessary, but if the signatures on the contract are witnessed, disputes may be avoided should one of the parties deny his signature. The witnesses should initial at the bottom of each page and alongside any clauses in the contract which have been cancelled or amended.

Usual clauses in the agreement of sale (also called deed of sale or offer to purchase)

Please refer to Annexure A.

Identification of the parties, the property and the purchase price

The essential terms of the sale must be contained in the written contract, namely a description of the parties, the property and the purchase price. If any one of these material terms are absent, the agreement of sale will not be enforceable.

Purchaser

The agreement must identify the purchaser, thus it should contain the full names and present address of the purchaser, together with the purchaser’s identity number and/or date of birth.

Seller

The agreement must also identify the seller, thus it should contain the full names and address of the prospective seller and identity number and/or date of birth.

Description of the property

The property must be properly described so that no confusion can arise as to which property is being sold. If there is any ambiguity or uncertainty, the sale will be void and non-enforceable. However, the courts do not insist on a perfect description. What is important is whether the property can be identified from the written description. The street address or the erf number is useful in identifying the property or, in the case of a sectional title unit, the number and name of the block.
The purchase price

The written contract must specify the price of the property sold, or how the price can be worked out, without requiring further evidence or agreement between the parties. If, for example, the agreement states that the price is R100 000, there is no problem with the agreement. However, if the agreement states that the price must still be finalised by the parties, then there is no valid agreement and therefore no sale.

If nothing is said about the method of paying the purchase price, it is assumed that it will be paid in cash on date of transfer. Very often, clauses are inserted in the contract to change that position.

**EXAMPLE**

'The purchase price shall be the sum of R…… payable in cash free of exchange as follows:

(a) A deposit of R…… on signature hereof to the seller's attorneys [name of the attorneys], which amount shall be invested in an interest-bearing account for the account of the purchaser;

(b) The balance to be paid by the purchaser to the seller in cash upon registration of transfer. Upon demand, the purchaser shall furnish the seller with a banker’s or other guarantee approved of by the seller.'

The payment of a deposit

The deposit is usually 10 percent of the purchase price and is paid at the time that the seller accepts the purchaser's offer. The seller does not receive the deposit at this stage. The agreement would normally specify that the deposit is paid to either the seller’s estate agent or to the seller’s attorney to be held in trust until the date of transfer.

The balance of the purchase price

The balance of the purchase price is normally payable in cash on date of transfer of the property into the name of the purchaser.

Sometimes, the seller will also insist that the purchaser obtains a guarantee from a bank confirming that the necessary loan has been granted to the purchaser (if applicable) or that the bank is holding the necessary funds on hand for payment to the seller on date of transfer.

In addition to the above essential terms, the parties usually include additional clauses that regulate their agreement. The following clauses may be inserted:

**Expiry date**

The expiry date is the date by which the seller must decide whether or not to accept the purchaser’s offer.

**EXAMPLE**

'This offer expires on ................ (date) and until then is irrevocable by the purchaser.'
Mortgage bond

Most agreements of sale are made subject to the condition that the purchaser is able to raise the necessary funds from a bank or other financial institution. If the bond is not granted, the sale becomes null and void and all moneys are refunded to the purchaser.

**EXAMPLE**

'This sale is conditional upon a first mortgage bond of R......... being granted by a recognised bank, building society or other financial institution within ............ days from date of acceptance of this offer. The purchaser hereby authorises ................. (name of estate agent/agency) to apply for a loan on his/her behalf.'

Effecting transfer

Agreement is often reached as to the date when the transfer will take place. It is impossible to accurately predict when the registration of transfer will take place in the relevant deeds office.

**EXAMPLE**

'Transfer of the property shall be passed by the seller’s conveyancer and shall be given and taken by the purchaser on ............ (date) or as soon as possible thereafter.'

Costs of transfer

It is usual for the purchaser to undertake to pay the costs of transfer. These costs will include the conveyancer’s fees and all other costs which are reasonably incurred in the passing of transfer.

**EXAMPLE**

'The purchaser shall pay all the transfer costs incurred in respect of the transfer of the property, including transfer duty and the costs of this deed of sale.'

Occupation and possession

The owner of the immovable property generally has the right to possess the property and use it for his own purposes, unless of course he has parted with that right by leasing the property to a tenant. The purchaser only becomes the owner once registration of transfer has taken place, on which date he then acquires the right to possess the property.

Frequently, the seller and purchaser agree that the purchaser will be able to take occupation of the property on a certain date (normally as close to the anticipated date of transfer as possible). During the period of occupation, but prior to transfer being registered, the purchaser pays occupational rental/interest. It is equally possible for the seller to remain in occupation of the house after transfer and to pay occupational rent/interest in the reverse situation.
Should the seller have agreed to give occupation (as opposed to possession), and the house is occupied by someone else on the proposed date of occupation, then the seller will be in breach of contract and the buyer may well decide to sue for damages. (Tenants are protected in their occupation and the buyer cannot usually eject them.)

**EXAMPLE**

- 'Vacant occupation of the property shall be given to the purchaser by the seller on .................. (date) and if the purchaser takes occupation before transfer, the purchaser shall pay to the seller the sum of R ................. per month/ .............. percent per annum on the balance of the purchaser price outstanding until transfer is effected.'

- Possession of the property shall be given to the purchaser on date of registration of transfer from which date sole risk passes to the purchaser.

**Rates and taxes**

The parties usually agree that the purchaser will be responsible to pay for a proportional share of the annual rates from the date of possession.

**EXAMPLE**

'The purchaser shall be liable for a pro rata share of all rates and taxes from date of possession.'

**Sole risk**

Under common law, once the agreement of sale is concluded, the risk of damage passes to the purchaser, even if the seller remains in occupation or possession of the house. So for example, if the house is destroyed by fire before transfer, the purchaser will bear the loss and the seller may force purchaser to pay the full price despite the fire-damage, unless the damage is caused by the seller’s negligence.

The common law position can be changed by agreement and most agreements contain a clause stipulating that risk passes on possession or on transfer. Thus the purchaser should make sure the home is properly insured when he becomes liable!

**EXAMPLE**

Possession of the property shall be given to the purchaser on date of registration of transfer from which date sole risk passes to the purchaser.

**Voetstoots**

In common law, the seller is *not* liable for *patent defects*. Patent defects are defects, which can be seen on a reasonably careful inspection of the property. Thus, for example, if a house is purchased and there are broken windows, the purchaser will be liable to fix those.

In common law, the position is different with *latent defects*. Where there is some defect in the house which cannot be seen on a reasonably careful inspection, the seller is generally liable for those defects. He may be called upon to refund part of the purchase price or the sale may be cancelled, depending on the nature of the defect. Examples of latent defects include a leaking roof and sinking ground.
Sellers are usually reluctant to make good and run the risk of having the sale cancelled or having to refund a part of the purchase price should a latent defect later become apparent. Therefore, it is usual for the seller to add a 'voetstoots' clause ('voetstoots means 'as is') into the agreement of sale to change the common law position.

A voetstoots clause excludes the seller's liability for latent defects, unless the buyer can prove that the seller knew of the defects at the time of or before the sale.

Note that if a voetstoots clause is included in the agreement, the purchaser should be given the opportunity to inspect the property and accordingly acknowledge acceptance of the condition thereof.

If the seller knew of the latent defect, even if there is a 'voetstoots' clause in the contract, he will remain liable. The onus of proving that the seller knew of the defect lies on the purchaser.

**EXAMPLE**

'The property is sold 'voetstoots' and as it stands, the seller giving no warranty in regard to the buildings and any improvements upon the property. The seller shall not be liable for any defects in the property, either latent or patent.'

**Existing conditions**

This clause protects the seller from any discrepancy between what is believed to be the size of the property and the actual extent of that property.

**EXAMPLE**

'The property is sold as described in the existing title deeds and is subject to all conditions, servitudes (if any) attaching thereto or referred to in the said title deeds or prior deed. The seller shall not be liable for any deficiency in extent which may be revealed on any resurvey, nor shall the seller benefit by any possible surplus.'

**Commission**

This clause records the seller's obligation to pay the estate agent's commission, if applicable.

**EXAMPLE**

'The seller shall pay the agent's commission plus VAT thereon at the rate as laid down from time to time by the Institute of Estate Agents/in the amount of R........... / at the rate of ............ percent of the purchase price which commission may be deducted from the initial deposit paid by the purchaser.'

**Fixtures and fittings**

The question of which fixtures and fittings automatically go with the house is a frequent cause of disputes and misunderstandings between the purchaser and seller. The law leaves the purchaser and seller to make their own arrangements.
Where there is no agreement, the law assumes that certain things, for example, electrical wiring and the plumbing, are handed over with the house and that the seller removes other items, for example, stoves and refrigerators.

Unfortunately, there are a number of fixtures and fittings on which the law is uncertain. The purchaser should mention these at the time of making his offer and agree with the seller whether or not these are to be regarded as part of the sale. Items falling within this category include TV aerials, air conditioners, heaters, carpets, blinds, and so on.

Permanent fixtures include built-in kitchen cupboards, fitted curtain rails, built-in kitchen appliances, extractor fans, purpose-made bedroom units and so on.

**EXAMPLE**

'The property is sold inclusive of all existing fixtures and fittings which the seller warrants to be his/her property and fully paid for. These, together with the following movables, which are specifically included, are sold voetstoots: ......................... (list).'

**Beetle-free certificate**

Financial institutions or banks will usually make the granting of a bond conditional on inspection and replacement of infested timber. It is usual for the seller to undertake to have for all accessible portions of the property to be inspected by a sapca (South African Pest Control Association) registered inspector, and, in the event of any infestation by wood-borer beetle, to replace such infested timbers with pre-treated timber at his or her own cost before transfer.

**EXAMPLE**

'The seller undertakes at his/her own expense to arrange for all accessible portions of the property to be inspected by a government-approved entomologist and, in the event of any infestation by notifiable beetle, the seller shall replace such infested timbers with pre-treated timber at his/her own cost before transfer.'

**Certificates to be provided by the seller**

It is a legal requirement that the seller must produce the following certificates (and where necessary arrange for the repair and replacement of the installation at his cost) before the buyer takes possession of the property:

- a certificate of compliance in terms of which the electrical installation of the property is inspected by a registered electrical contractor, and.
- a certificate of compliance in terms of which the electric fence on the property (if any) is inspected by a registered electric fencing installer;
- a certificate of conformity applicable to all gas appliances or systems on the property issued by an authorized registered person.

**EXAMPLE**

'The seller undertakes to arrange for a valid certificate of compliance in terms of legislation, in respect of electrical installations and the electrical fence on the property. All costs incurred in obtaining such a certificates, including cost of any repairs or replacements required in order for
the certificates to be issued, shall be borne by the seller. The seller warrants that there has been no addition or alteration to the electric installation existing on the property and/or electrical fence (if applicable) subsequent to the issue of such certificate.

**Domicilia**

Both parties will usually nominate an address as their *domicilium citandi et executandi*, which simply means a chosen address at which official notices in connection with the sale can be delivered to them. This must be a physical address.

**EXAMPLE**

'It is agreed by the parties that their respective addresses hereinbefore set out shall be the addresses to which all notices or other documents may be sent in relation to these presents.'

**Breach**

Should the purchaser fail to fulfil any of the conditions set out in the sale agreement, the seller has the right to claim the immediate payment of the purchase price, or to cancel the sale and retain any payment made by way of a deposit. The seller also has the legal right to sue the purchaser for breach of contract.

**EXAMPLE**

'In the event of the purchaser failing to fulfil on due date any of the terms and conditions of this deed of sale, the seller or his/her agent, shall have the right either to:

(a) Cancel the sale by registered letter addressed to the purchaser, in which event, the purchaser shall forfeit all monies paid to the seller or his/her agent, without prejudice to the seller's other legal rights and remedies and the right to claim damages; or

(b) Claim immediate payment of the whole of the purchase price and the fulfilment of all the terms and conditions hereof.'

**Cooling-off provision in terms of section 29A of the Alienation of Land Act**

South African Law does not allow any party to a valid contract to unilaterally set aside a contract simply because they have changed their mind. In order to afford some protection to vulnerable purchasers (such as first-time home buyers), a “cooling-off provision” has been included into the Alienation of Land Act. This provision allows the purchaser in certain circumstances to cancel an offer made/agreement entered into within five working days of signing, without facing any penalties.

**The cooling-off clause applies to all purchasers except:**

- Persons who buy land which is not used or intended to be used mainly for residential purposes (i.e. commercial, industrial or agricultural properties);
- Persons who buy land at a price exceeding R250 000;
- Where the purchaser is a company, close corporation or trust;
- Persons who buy land at a publicly advertised auction;
- Where the purchaser has the right in the agreement to nominate or appoint another person as purchaser (this is to prevent a situation where a company, close corporation or trust uses a natural person as a front to buy land);
• Where the purchaser purchases the land by the exercise of an option (an option is a contract promising to keep a particular offer open for a specific period of time) which was open for at least 5 days.

In order to exercise the cooling-off right, the purchaser or his or her agent acting in terms of written authority must deliver a written notice to the seller or his agent indicating that he is terminating or revoking the deed of alienation / offer to purchase within 5 business days of signing the offer to purchase or deed of alienation. The 5 days excludes the day on which the agreement was entered into.

If the purchaser has exercised his cooling-off right, he is entitled to a refund of all moneys paid by him in terms of the offer to purchase/deed of alienation, within 10 days of delivery of the notice to withdraw/revoke.

**Miscellaneous provisions**

The buyer and seller can practically put any other clause into their agreement, as long as it is lawful. The exact nature of the clauses will depend on the particular circumstances existing at the time of the sale.

**Provisions applying to the sale of land on instalments**

The Alienation of Land Act also contains strict provisions in regard to the sale of land on instalments. The provisions must be included in the agreement if the land is intended for mainly for residential purposes and the purchase price is payable in more than two instalments over a period exceeding one year. If the provisions of the Act should have been incorporated in the contract but were omitted, such contract is null and void.
Deeds lay-out and preparation

When preparing deeds and documents to be lodged for registration in the deeds office, the conveyancer must comply with various requirements prescribed by legislation or Regulation or the rulings of the Registrar.

As follows is a summary of the rules to be applied in the preparation and lay-out of deeds and other documents:

- Deeds and documents must be on matt, white, A4 paper.
- Deeds and documents must be written, typed or printed on one side of the paper only.
- Deeds and documents must be in clear writing, print or type, in black permanent ink.
- Generally, photocopies will not be accepted, unless they are copies of documents filed of record in a Government office, for example, the Master’s office. These copies are acceptable providing they are certified as true copies of the original by the relevant government official, a conveyancer, notary or, in cases of diagrams, by the Surveyor-General.
- Generally no amendments and no writing between lines (even with the usual initialling) is accepted in the important parts of the deeds, for example, names of the parties, property description, extents of the properties and references to amounts of money. These rectifications usually require retyping of the page concerned.
- Material alterations and writing between lines must be initialled by the person signing and the person attesting that signature. If an alteration is attested to by a person other than the original attestor, then that attestor must attach his signature.
- All alterations that are interlineations (writing between lines) must, in the case of a deed attested by a notary, be initialled also by such notary.
- A margin of at least four centimetres must be allowed on all pages of a deed for binding purposes.
- Signatures or initials on documents must be made in durable black ink. Note that when sending powers of attorney and other deeds office documents to anyone for signature, a prominent note must be attached pointing out that the completion and signature of the documents must be in black ink (ballpoint pens are accepted).
- A signature to a document should not encroach on the required margin.
- The upper half of the first page of a deed must be left blank. This section is used by the Registrar for stamp assessment, the registration endorsement as regards notarial deeds and general powers of attorney, and for cancellation endorsements in respect of bonds and charges.
- Any spaces in deeds, which have not been used, must be ruled through. This does not apply to the blanks on the back of pages.
- The conveyancer must number all pages (not the backs). Endorsements are made by the Registrar on the open backs of the pages and as each blank page is used, the examiner numbers that page starting with the number following on the last page of the deed as numbered by the conveyancer. Generally, only one endorsement is made per page but there are exceptions to this rule. When a deed
is microfilmed, the deed appears first, followed by the endorsements in date order.

- Every deed executed in a deeds registry or lodged for registration in a deeds registry must disclose the place and date of execution thereof.

### Preparation certificate (‘prep’ certificate)

In terms of Regulation, all deeds of transfer, certificates of title to immovable property and all bonds must be prepared by a practising conveyancer, who must sign a certificate in the prescribed form in the upper right hand corner on the first page of the deed.

![Example of preparation certificate](Image)

This certificate is known as the ‘preparation’ or ‘prep’ certificate.

The preparation certificate for any power of attorney, application or consent required for the performance of an act of registration in a deeds office, as well as any agreement of partition, may be signed by a practising attorney, notary or conveyancer.

If the certificate as indicated above is signed by an attorney or notary, a practising conveyancer must countersign and confirm that the attorney or notary is indeed a practising attorney or notary.

### The significance of the preparation certificate

By signing this certificate the conveyancer accepts responsibility for the correctness of the information contained in the deed.

The responsibility which the preparer of the deed or document accepts, is set out in detail in Regulation 44 of the Act as follows:

- That all copies of the deeds or documents intended for execution and/or registration are identical at the date of lodgement. (In registries that use microfilming, this aspect will not arise as only one copy of the relevant deed is lodged with the deeds registry.)

- That, in a case of a deed of transfer or certificate of title to land, all the applicable conditions of title contained in or endorsed upon the owner’s copy of the title deed, together with any applicable proclaimed township conditions have been correctly brought forward in that deed of transfer or certificate of title to land.

- That, if a power of attorney, application or consent has been signed by a person in his capacity as an executor, administrator, trustee, tutor, curator, liquidator or judicial manager, the document evidencing such appointment has been shown to him and that that person has been appointed in that capacity;

- That to the best of his knowledge and belief and after the relevant enquiry has been made:
  - the names, identity number or date of birth and marital status of any natural person who is a party to the deed or document, are correctly reflected;
– in the case of a person who is not a natural person and in the case of a trust, that the name and registration number are correctly reflected in the deed or document; and

– the necessary authority has been obtained for the signing of any document in a representative capacity and the transaction is authorised by the constitution, regulations, founding statement or trust deed. (In the case of a trust deed, the preparer is also certifying that, where necessary, security was furnished to the Master of the High Court.)

• That where a conveyancer has signed the preparation certificate on a deed of transfer, certificate of title conferring title to immovable property or a mortgage bond, he accepts responsibility that the particulars mentioned in the preceding paragraph have been brought forward correctly from the power of attorney.

Each conveyancer has his or her-own method of 'prepping.' Should the deed not conform to the Deeds Office regulations, it is the conveyancer who signed the preparation certificate who must take responsibility therefor.

Note that the conveyancer who prepped the deed does not necessarily have to be the conveyancer who registers that deed; it may be an entirely different conveyancer.

**Attestation and authentication of signatures**

**Attestation**

Any power of attorney and any other documents requiring witnesses must be signed in the presence of two competent witnesses, or a commissioner of oaths, duly described as such. (Please see notes below for attestation of a power of attorney signed by spouses married in community of property.)

Note that a person who is benefited in the power of attorney is debarred from being a witness to the power of attorney. Thus, the conveyancer appointed as the agent to pass transfer or register a bond is incompetent as a witness.

**Authentication – the verification of a signature on a document.**

Special rules apply to documents executed outside the Republic. These need to be authenticated as provided for in Rule 63 of the High Court; or as stipulated in the “Convention Abolishing the Requirement of Legislation for Foreign Public Documents”.

Rule 63 provides that any document executed in any place outside the Republic is deemed to be sufficiently authenticated for use in the Republic if it has been duly authenticated at such foreign place by the signature and official seal of:

• the head of a South African diplomatic or consular mission in that country, or a delegated official;
• any authorised government official of the foreign country;
• any person of that foreign country who can prove by a certificate issued by either of the above persons to be duly authorised to do so;
• a notary public of Britain, Northern Ireland, Botswana, Lesotho, Swaziland or Zimbabwe, for the certification of a document in one of these countries.

Deeds and documents executed in the Republic must be in one of the official languages. If the deed or document is executed outside the Republic in a foreign language, it may be accepted at the discretion of the Registrar, provided that a translation duly certified by a sworn translator is lodged with the deed or document. If no such sworn translator is available, the Registrar can accept a translation under oath by such other person as he may approve.
The description of natural persons who are parties to a deed or document to be registered at the deeds office

It is the responsibility of the conveyancer who signs the preparation certificate on a deed or document to ensure that the particulars relating to the parties whose names appear in the document are correct. The Registrar does not require proof of the identity number or date of birth.

Every deed, whether executed before the Registrar or a notary and which must be registered in a deeds office, must:

- state the full name and marital status of the person concerned;
- state whether the marriage was contracted in or out of community of property or whether the matrimonial property system is governed by customary law in terms of the Recognition of Customary Marriages Act (where the marriage is governed by the law of the Republic of South Africa);
- state the full name of the spouse (if the marriage is in community of property); and
- state, where applicable, that the marriage is governed by the law of another country and the name of that country.

In terms of regulation, the identity of a natural person is established by means of his name and identity number reflected in the identity document issued to him by the responsible government authority in the Republic.

If no identity document has been issued to a natural person or if, although issued, it contains incorrect information, the identity of the person must be established by means of an affidavit signed by the person or by means of a certificate signed by a conveyancer.

All deeds, powers and other documents must contain the full names and either the official identity number or date of birth of a natural person named in that deed, power or document. Where a person is acting in a representative capacity, for example, as agent or executor, the details of his own identity number or date of birth must not be reflected.

In order to ensure that the correct particulars are disclosed in the deed or document which has to be prepared, the conveyancer should request the following from the parties and retain a certified copy of these documents on the office file for record purposes:

Identity document;
Marriage certificate, if applicable;
Antenuptial contract, if applicable;
If divorced, a copy of the Divorce order.

The conveyancer will also draw up and request the parties to sign a personal / marital status affidavit swearing to the details of their full names, identity number or date of birth and marital status, which the conveyancer will retain on the office file for record purposes.

Note

Note that in practice it is not always possible to inspect the identity documents of persons who are parties to the deeds or documents. Documents are often sent by post to the person for signature and the 'preparer' should then request the person to sign an affidavit swearing to the details of his name, identity number or date of birth and marital status. The person should also provide a copy of the relevant page of his identity document. The practitioner can
then retain these documents and file a certificate, if needed in order to comply with deeds office requirements.

Marital status

When dealing with conveyancing procedures and the description of natural persons to a deed, it is important to know and understand the types of marriages and matrimonial property systems that may apply. Please study the practical examples given in Annexure V.

Unmarried persons

A single (unmarried) person should be described as unmarried. The maiden name or former married name of a woman must not be disclosed, except where the surname in the title differs from the one presently used. In such a case, the former name is put in brackets for purposes of better identification.

Married persons

In South Africa, there are three different laws in terms of which persons may be married:

- The Marriage Act, 1961 which allows for a civil marriage between a man and a woman.
- The Recognition of Customary Marriages Act 1998 which allows for the registration of African customary marriages.
- The Civil Union Act, 2006 which allows a civil marriage or a civil partnership between two people, regardless of gender.

Each of these unions will have consequences on the person and the property of the spouses. We will briefly look at the patrimonial consequences of the different types of marriage, as well as the description of married persons in deeds and documents:

Marriages in community of property

A marriage in community of property is the automatic system of marriage that applies in South Africa if spouses get married without signing any agreement before marriage. The patrimonial consequences of a marriage in community of property are as follows:

All assets and debts of the spouses that they bring into the marriage or acquire during the marriage are shared in a joint estate.

Furthermore, there is joint administration of the things the spouses own. This means the husband and wife share in controlling their joint property. To protect each spouse, the other spouse’s written permission is necessary for certain important transactions, for example when buying or selling a house, or getting a mortgage bond. This is required in terms of section 15 of the Matrimonial Property Act, 1984 which provides that either spouse may, with the prior written consent of the other spouse:

- sell, mortgage, burden with a servitude;
- confer any other real right in immovable property forming part of the joint estate;
- enter into a contract as defined in the Alienation of Land Act 68 of 1981; and
- bind himself or herself as a surety.

Thus when dealing with conveyancing procedures affecting the joint estate of spouses married in community of property, it must be borne in mind that the consent of the other spouse must be given separately in respect of each act and attested to by two
competent witnesses. The consent must be lodged with the particular transaction for registration in the deeds office. The Registrar will accept a power of attorney signed by both spouses before two witnesses in place of a separate consent (note that it is not competent for a commissioner of oaths or person acting in a similar capacity to sign as a sole witness on such a document).

Spouses to a marriage in community will be described as follows:

**EXAMPLE**

Mary Jones  
Identity Number 750430 5009 08 6  
and  
John Jones  
Identity Number 770929 0005 083  
married in community of property to each other.

On death or divorce of the spouses, the joint estate is divided equally between the two spouses.

**Marriages out of community of property**

Before getting married, the spouses may enter into an agreement called an antenuptial contract. This contract must be executed before a notary and registered at the deeds office. Usually an antenuptial contract excludes community of property and profit and loss. This means the spouses each own and control their own things - they each have a separate estate.

When parties are married out of community of property, there are two kinds of marriages out of community that may apply:

- If the spouses have not expressly excluded it in their antenuptial contract, the accrual system will apply to their marriage out of community of property. This means that each spouse will have a separate estate during their marriage. However, when the marriage ends, all assets acquired during the marriage are shared. As the accrual system kicks in when the marriage ends, for conveyancing purposes it will not affect the description or capacity of parties to deal with their separate estates while the marriage subsists.

- If spouses are married out of community of property without the accrual system, the spouses will each have a separate estate. When the marriage ends, each spouse will keep their separate estate.

Therefore, to verify a marriage out of community of property it is essential to obtain a copy of the marriage certificate and a copy of the duly registered antenuptial contract. This applies irrespective of whether registration is to be in the name of the husband or the wife.

Spouses married out of community of property, with or without the accrual system, will be described as follows:

**EXAMPLE**

Leonard James  
Identity Number 641209 6754 007  
moved out of community of property.
**Customary marriages**

In terms of the Recognition of Customary Marriages Act all customary marriages, entered into before or after the commencement of the Act, which are valid marriages under customary law and which comply with the requirements of the Act, are recognised marriages, irrespective of whether a person is a spouse in more than one customary marriage. ‘Customary law’ is defined in the Act as ‘the customs and usages traditionally observed among the indigenous African people of South Africa and which form part of the culture of those peoples’. (Note that customary marriages concluded in terms of Hindu and Muslim rites remain invalid unless they were solemnised in terms of the Marriage Act 25 of 1961.)

- A customary marriage, in which a spouse is not a partner in any other existing customary marriage, is a marriage in community of property unless the spouses entered into an antenuptial contract prior to their marriage. Spouses to a customary marriage will be described as follows:

  **EXAMPLE**

  Gift Nkosi  
  Identity Number 750430 5009 08 6  
  and  
  Princess Nkosi  
  Identity Number 770929 0005 083  
  married in community of property to each other.

- Where the spouses have entered into an antenuptial contract prior to their marriage, the marriage may have the proprietary consequences of a marriage out of community of property. The description of a person in a deed or document to be registered will be:

  **EXAMPLE**

  Gift Nkosi  
  Identity Number 750430 5009 08 6  
  married out of community of property.

- A husband in a customary marriage may, after the commencement of the Act, enter into a further customary marriage. The husband must, however, make an application to court for the approval of a written contract which will govern the proprietary consequences of his marriages. The description of a person in a deed or document to be registered will be:

  **EXAMPLE**

  Simon Banda  
  Identity Number 450912 5009 082  
  married, which marriage the proprietary consequences whereof are governed by an order of court issued in terms of the Recognition of Customary Marriages Act No. 120 of 1998.

**Civil unions**

In terms of the Civil Union Act, parties can enter into either a marriage or a civil partnership. The parties can be of the same sex or of different sexes. A certificate of registration must be issued by a marriage officer, which indicates whether the civil union is a marriage or a civil partnership.
A person may only be a spouse or partner in one marriage or civil partnership at any given time. A person in a civil union may not conclude a marriage under the Marriage Act or the Customary Marriages Act and vice versa. Civil unions may be terminated though death of a spouse or partner or divorce.

A civil union will be in community of property, unless the parties have executed an antenuptial contract prior to their civil union. The description of parties to a civil union will depend on whether a marriage or civil partnership has been entered into and whether the civil union is in or out of community of property.

- Where parties have entered into a civil union which is a marriage, the parties will be described in the same way as spouses to a civil marriage, the description depending on whether they are married in or out of community of property.

- Where parties have entered into a civil union which is a civil partnership, the description will depend on whether or not the parties entered into an antenuptial contract.

Where the parties did not enter into an antenuptial contract, the description would be as follows:

**EXAMPLE**

Peter Johns  
Identity Number 681023 8040 007  
and  
Craig Johns  
Identity Number 750104 6234 081

Partners in a civil partnership in community of property registered in terms of the Civil Union Act No. 17 of 2006

Where the parties have entered into an antenuptial contract excluding community of profit and loss, the description would be as follows:

**EXAMPLE**

Alan Way  
Identity Number 760304 7324 084  
Partner in a civil partnership out of community of property registered in terms of the Civil Union Act No. 17 of 2006

**Foreign marriages**

When dealing with a conveyancing matter it may be that a party to the transaction is married according to the laws of a foreign country.

In order to determine which country’s laws regulate a person’s marriage, the test is to determine domicile of the husband at the date of the marriage. A person’s domicile refers to the country they are residing in, coupled with an intention for it to be their permanent home. For example, if the husband regards France to be his permanent home at the date of marriage, the laws of France would regulate the marriage and not the laws of South Africa.
The Deeds Registries Act states that if a marriage is governed by the law of a foreign country then it must be stated that the marriage is governed by the law of that country.

Thus a spouse to a foreign marriage will be described in the power of attorney as follows:

**EXAMPLE**

Mattieu Le Blanc
Identity Number 670205 5321 080
married, which marriage is governed by the laws of France, and assisted by my wife, Claudia Le Blanc as far as needs be.

See Annexure V for further examples of the descriptions in the deed itself.

If married in the USA, the marriage is governed by the State.

**EXAMPLE**

Luke Skywalker
Identity Number 620505 5321 080
Married, which marriage is governed by the State of California, United States of America.

In dealing with property registered in the name of a person whose marriage is governed by the laws of a foreign country, the practice is to have the spouse assist in executing powers and other documents.

The preparer of a deed or document must establish that ‘to the best of his knowledge and belief and after having made due enquiry’ an actual marriage has been solemnised and that it is governed by the laws of a foreign country. This should be done by way of affidavit. In every case the domicile of the husband must be ascertained, as this determines the law which governs the marriage. The following should be obtained:

- a joint affidavit (or separate affidavits) by husband and wife attesting to the date and place of the marriage and the husband’s domicile at the date of the marriage; and
- an authenticated copy of the marriage certificate, if available.

If an authenticated copy of the marriage certificate is not available, the affidavit of both spouses must disclose this. Authentication should be done in accordance with the rules of authentication (see above)

A formal affidavit from the wife may be dispensed with if the husband’s affidavit proving domicile at the time of the marriage is obtained and there is some other evidence of the marriage, for example, an acceptable copy of the marriage certificate.

**EXAMPLE**

We the undersigned, ROBERT MICHAEL JACOBS (Identity No. 450609 4321 007) and JODENE PHILIPPA JACOBS (Identity No. 490411 7690 009), do hereby make oath and say that:

(i) We were married at Christ Church, New Zealand, on 9th June 1970.
(ii) At the date of the marriage, I the said Robert Michael Jacobs, was domiciled in England. That accordingly our marriage is governed by the laws of England.

(iii) That we have no authenticated copy or original of our marriage certificate in our possession.

or

(iv) That the notarially certified copy of our marriage certificate annexed hereto and initialled by us for identification is a copy of the original certificate in our possession which was signed by the marriage officer and handed to us.

Intervening marriages

Generally, any change of marital status must be proved, or it must be proved that the change does not affect the contractual capacity of the person concerned. If documents being prepared for transfer purposes show that the transferor had a marriage which was not reflected on the title deed, the conveyancer must establish that the previous husband or wife has no interest in the property.

Prior surnames are normally not quoted except where a change has occurred and the maiden name or prior surname is quoted for identification purposes for example, Mary Farthing (born Cummings).
TRANSFER OF PROPERTY

Receipt of transfer instructions

On receipt of the instructions to register a transfer a separate office file should be opened. The matter must be given a reference number (which will also be the client’s account number) according to the usual office administration procedures. In some firms this involves filling in client cards which are submitted to the accounts department. In other firms the secretary concerned may feed the details straight into the firm’s database. Whatever the procedure followed, it is essential that the matter be given a reference or file number.

Once the matter has been allocated a reference or file number, all the important details regarding the transaction should be recorded on the front cover of the file (or on the inside front cover).

Note

These details will include the date of purchase, purchase price, deposit, agent's commission, property description, bond cancellation figures, names and contact details of the parties involved. Simultaneous transactions such as the cancellation of the seller's bond over the property or the registration of a bond over the property by the purchaser must also be noted, together with the names of the attorneys attending to those transactions, the relevant contact person and their phone number.

An acknowledgement of receipt of the instructions should immediately be sent to the person from whom they were received (for example, the estate agent or the seller). The seller and the purchaser should be notified that their transaction is being attended to.

If the estate agent requests that he be kept covered for the commission due to him by the seller, the agreement of sale must be checked to ascertain whether the seller has authorised that the commission be paid out of the proceeds of the sale.

Note

If the seller has given such authorisation, then the conveyancer can provide such an undertaking subject to the following conditions:

- that authorisation to effect payment is not withdrawn by the seller;
- that registration of transfer in the name of the purchaser does in fact take place; and
- that sufficient funds are available.

The agreement of sale (see Annexure A) must be examined and if the sale is subject to the suspensive condition that a mortgage bond be obtained by the purchaser, only the preliminary matters should be attended to as the conveyancer will not be able to recover the costs of any work done should the condition not be fulfilled.

Other clauses that you should note are:

- if and when a deposit is payable and to whom;
- whether the balance of the purchase price is to be secured by a bank guarantee and if so, by what date the guarantee should be delivered; and
- if agent’s commission is to be paid and when.
A computer printout, obtainable from the deeds registry, will give all the details regarding the owner, for example, his full names, identity number, the property description, references to existing mortgage bonds, interdicts and the number of the holding title deed. Please refer to Annexure D. This is an example of a computer printout.

The holding title deed should be examined in order to ascertain whether there are any conditions which may delay transfer or even prohibit transfer.

The personal particulars of the parties must be obtained. This can be done over the telephone or by sending a printed form to the client setting out what particulars are required. This should be done by facsimile or e-mail as the delay in sending such a form by mail will only delay matters.

The most important details to acquire are the party’s full names and identity number, their SARS income tax number, their marital status and, if they are married, how they are married. Ask them to forward a copy of their identity document, marriage certificate and antenuptial contract and divorce order, if applicable. This information is essential for the drafting of certain documents.

In the event of a bond being registered over the property by the seller, the following must be ascertained from the seller:

- the name of the financial institution;
- the branch and branch address; and
- the account number.

Due to the fact that a mortgage bond is registered over the property, the title deed will be in the bond holder’s possession and the following must be requested from him:

- the title deed;
- the amount still owing by the seller to the bond holder (the ‘cancellation figures’); and
- the name of the attorneys who will attend to the cancellation of the bond.

The relevant form requesting a rates clearance certificate together with the required fee must be sent to the local authority. A valuation certificate can be requested simultaneously. The South African Revenue Services may require a valuation certificate when applying for a transfer duty receipt. The rates clearance certificate will be lodged with the transfer documents in the deeds registry, as it is a legal requirement that no transfer of property may be registered until a written statement by an authorised officer of the municipality or local authority is produced. This written statement must state that all municipal rates in respect of the property have been paid.

A pro-forma invoice should be prepared and forwarded to the purchaser. This invoice sets out the monies which he will have to pay to the transferring attorneys and includes the purchase price, conveyancer’s fees, transfer duty, deeds office fees, pro rata rates, VAT, postage and petties, and any other charges for which he is responsible.

### Preparation of transfer documents

As soon as the purchaser’s bond has been approved then certain documents can be prepared.

An affidavit regarding marital status should be obtained from every party to the transaction. Please refer to Annexure F. Where a couple are married in community of property, an affidavit from one of the spouses will suffice. These affidavits are obtained in order to ensure that the correct position is reflected in the documents which the
A conveyancer has to prepare. The Deeds Registries Act states that the marital status of a person must be stated in every deed or document. These affidavits are not lodged in the deeds registry but are kept on file for the record.

An insolvency affidavit must be obtained from the transferee and transferor declaring that they are not and never have been insolvent, and furthermore that there are no pending applications for the sequestration of their estate. Please refer to Annexure F. These affidavits are not lodged in the deeds registry and like the marital status affidavits, are merely for the record. The reason behind obtaining these affidavits is that the Registrar of Deeds is provided with a list of all insolvents and an interdict is then entered in the records of the deeds registry against the insolvent's name. This is to prevent such persons from dealing with any immovable property, mortgage bond or any other real right.

A FICA affidavit must be obtained from the transferee and transferor.

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**Note**

In terms of the Financial Intelligence Centre (FICA) Act, every conveyancing firm is bound to collect information with regard to parties in respect to each transaction. Please study the requirements set out in Annexure B. Different documents are required for different types of entities but broadly speaking the documents required are proof of identity of each party and proof of residency for the parties. In the case of a company, close corporation or trust, the identity of the various directors, members or beneficiaries would need to be established in a similar manner.

In the event of the seller or purchaser being a juristic person such as, a company or a close corporation, a person will sign the documentation on behalf of the juristic person. The person so signing must be authorised to sign and, as the conveyancer accepts the responsibility that such a person so signing is duly authorised to do so, it is very important to obtain a document from which it can be verified.

The usual procedure is for the conveyancer to prepare a resolution in which the authorisation of a specific transaction, as well as the signing powers of the person who will sign the documents for the juristic person, are set out. See also the chapters on companies and close corporations later.

**Power of attorney to pass transfer**

Please refer to Annexure H for an example. A power of attorney to pass transfer must be drawn for signature by the seller. This document empowers the conveyancer to transfer the sold property into the name of the purchaser. It contains all the details of the seller and purchaser, the property description, the date of purchase and the purchase price. This information must be carried forward in the deed of transfer exactly as it appears in the power of attorney.

The power of attorney, being a document in terms of the Act, must comply with the general provisions of the Act and regulations affecting all documents.

As we have seen above, the Act and regulations deal with a number of important requirements to be met:

- paper colour;
- signatures;
- preparation certificate;
- alterations;
• foreign languages; and
• place and date of execution.

A power of attorney which does not comply with these provisions is likely to be rejected and may well have to be re-drawn or re-executed.

It is seldom that an owner will personally execute his own deed. Usually he gives a power of attorney to pass transfer to a conveyancer to do this for him, as provided for in terms of section 20.

![Note]

Note the wording of section 20:

'Deeds of transfer ................. shall be executed in the presence of the Registrar by the owner of the land described therein, or by a conveyancer authorised by power of attorney to act on behalf of the owner .................'

No form of such a power is prescribed, but printed forms are available from stationers.

**The grantor of the power of attorney**

The grantor of the power of attorney describes the transferor of the transfer in accordance with deeds office practice. In a sale, the transferor is the seller of the property.

**The agent in terms of the power of attorney**

The agent must be a conveyancer and cannot be a witness to the power of attorney which appointed him. He should be appointed with the power of substitution so that in his absence or incapacity another conveyancer can execute the deed.

**The transferee in terms of the power of attorney**

The transferee of the transfer must be described in accordance with deeds office practice. In a sale, the transferee is the purchaser of the property.

**The property and its title**

In terms of Regulation , a power of attorney to pass transfer must contain a 'clear and sufficient description of such land or property [and] the registered number, if any, of such land or property.' Also, the size (extent) of the land must be expressed in words and in figures in the deed of transfer or bond.

**The causa**

The method of disposal or causa must always be stated in the power of attorney to pass transfer, as well as the date of disposal. Note that the power is the authority for statements made in the deed of transfer. As regards the causa, care should be taken to ensure that the power of attorney and transfer duty receipt agree in all respects. Very often the date of sale, for instance, differs in the receipt and the power of attorney with the result that one or the other has to be amended with full initialling and the deed is rejected for this to be done. There are a number of perfectly valid and legal causae giving rise to the passing of transfer although the commonest are purchase and sale and inheritance. The purchase price must be reflected here.
The execution clause

Powers must reflect the date and place of execution. In cases where a person has acquired the right to receive transfer or cession, the power of attorney can be signed by that person as if he were the owner. When the person receives transfer or cession, the power is deemed to have been executed by the owner of the property.

Example

A buys land, and before he has taken transfer of it, he enters into a notarial deed of servitude affecting this property with his neighbour owner X. Thereafter, still not having taken transfer, he signs a power of attorney to pass transfer of the land to B. When A has taken transfer, the notarial deed of servitude entered into by him before he in fact became the registered owner of the land affected by the servitude as well as the power of attorney to pass transfer to B, can be registered and acted upon without being attacked on the grounds that A was technically not the owner when he signed.

Multiple transactions in one power of attorney

There is nothing prohibiting one power of attorney to authorise transfer of different properties to various transferees. There can be a number of properties described in a power as long as each is described in a separate paragraph. In large estate transactions, an executor can give a single power of attorney authorising transfer to the various heirs of different properties.

However, generally it is better to draw separate powers where different properties have to be transferred to different persons. Each transfer then stands or falls on its own power and no endorsements on the power.

A multiple power of attorney can also be used if some of the properties referred to in the power are to be transferred immediately, leaving others to be transferred at some future date. The Registrar may require that the power be registered in terms of section 3(1)(u), but registration can be effected at any time even if the power has already been filed. There is no time limit for registration of a power of attorney and registration cannot be refused simply because the power might have been used in part.

Special / General powers of attorney

The owner of immovable property may wish to appoint an agent to sell his property on his behalf and/or to empower the agent to sign the transfer documents on his behalf. This may be the case for example, if the owner himself will be out of the country and unable to sign.

For this purpose the owner may sign a special or a general power of attorney appointing the agent, which is to be lodged at the deeds office. If the agent is required to carry out a series of acts or transactions registrable in a deeds registry, the Registrar is required to register the power of attorney for future use. Such powers are filed and numbered in yearly sequence under the code letters ‘PA’. They are indexed under the grantor’s name on the computer. Once the power of attorney has been registered, the agent will obtain the original.

Note that a general power of attorney may not be used for dealing with immovable property unless it contains express authority empowering the agent to do so. There must be express authority to sell and transfer land or mortgage it. Authority to ‘let, improve, alter or otherwise deal with’ is not sufficient to authorise a sale of land.
Detailed analysis of the deed of transfer

A deed of transfer has a prescribed form which must be followed. Refer to Annexure I for an example. Section 20 states that ‘deeds of transfer shall be prepared in the forms prescribed by law or by regulation . . .’ and regulation 82 states that ‘. . . the . . . deeds . . . shall be prepared substantially in the forms provided in the schedule of forms annexed to these regulations’.
EXAMPLE

Prepared by me
Conveyancer

(State full names and surname in block letters)

DEED OF TRANSFER

Be it hereby made known:

A. That .........

appeared before me ......at ......he, the said appearer, being duly
authorised thereto by a Power of Attorney granted to him / her by ....

dated the ....... day of...........and
signed at ....and the said appearer declared that

B. (Here insert an appropriate recital of the nature of the transaction or the
circumstances necessitating transfer)

C. and that he in his capacity aforesaid, did by these presents, cede and transfer, in
full and free property, to and on behalf of .......

heirs, executors, administrators or assigns,

D. (Here insert the description of land or share therein to be conveyed, including
the name, number, registration, division and administrative district and the area.
F. The regulations governing the extending clause and reference to conditions
must be observed.)

G. Wherefore the appearer, renouncing all the right and title (insert name of
transferer) hereto before had to the premises, did in consequence also
acknowledge (him, his or it and so on) to be entirely dispossessed of.

I. Thus done and executed at the Office of the Registrar of Deeds at ......on .......

g.g. (Signature of appearer)

In my presence

Registrar of Deeds
The deed of transfer has various component parts to it and it is important to have an understanding of each of these.

Refer to Annexure I and identify the components discussed below (note that details have not been inserted).

**The preparation Certificate**

See above notes for the form of this certificate.

**The heading**

This is the title indicating the nature of the deed, for example, deed of transfer.

**A: Preamble**

The preamble reference is made to the power of attorney appointing the appearer whose full names are given, and it describes the transferor or whoever acts on behalf of the transferor, quoting the authority for such action.

**B: Recital**

The recital gives the causa or reason for the transfer.

**C: Vesting Clause**

The vesting clause contains the full names, marital status, and identity number (or date of birth) of the transferee.

**D: The Property Clause**

It contains the full description of the land; stating the registration number of the land, place where the land is situated and the extent of the land.

**E: The Extending Clause**

It states the current Title Deed no (up until date of registration) giving reference to the Surveyor Generals diagram, which indicates where the boundaries run and what the width of the land, is.

**F: The Conditional Clause**

This clause states the conditions to be stated in the Deed of Transfer. This will include any conditions to be carried forward from the old Deed of Transfer and any new conditions that need to be stated.

**G: Divesting Clause**

This clause declares the previous registered owner to be divested of his ownership.

**H: The Consideration Clause**

If it is a sale of property the purchase price must be stated in the Deed of Transfer. If it is there is no sale and just a transfer the value of the property must be stated.

**I: Execution Clause**

This is where the execution of the Deed takes place, the appearer and the registrar do this. The Deed is signed by the conveyancer on behalf of the owner and it is witnessed by the registrar.
Deeds of transfer: supporting documents

The title deeds

Whenever immovable property is dealt with, the owner’s copy of the title must be lodged with the deed dealing with that property. There are exceptions to this rule, for example, transfers of land sold in execution or where land has been expropriated.

Regulation 51(1) provides that if a title has been lost or destroyed, a certified copy ‘issued to serve as an original’ can be used.

The issuing of certified copies is governed by regulation. Briefly, these regulations are as follows:

• A Registrar may issue a certified copy of a registered power of attorney for use in another registry.
• A Registrar can issue a copy of a title deed or bond ‘for information only’. These copies cannot serve in place of the originals.
• A copy can be issued for ‘judicial purposes only’. Written application must be made and signed by an attorney or an agent on behalf of the State.
• A certified copy of a title deed and bond to serve in the place of the originals can only be obtained after application has been made in terms of regulation 68.
• Any person can obtain a certified copy of a document which is not a deed or bond upon application under regulation 70.

The power of attorney to pass transfer

The Registrar will require a power of attorney to pass transfer which is signed by the owner of the property authorising the conveyancer to appear on his behalf before the Registrar to pass transfer of the property to the purchaser. If the owner himself is executing the transfer deed, as he is entitled to do, then, there will be no power of attorney. In practice this does not happen.

Rates clearance certificates

In order to register the transfer of a property on which rates are levied, a rates clearance certificate must be lodged with the deed of transfer. This proves that the rates due for the rate year (and any arrears) have been paid. (See Annexure G). Application for a rates statement and payment must be made to the local municipality in order to obtain the rates clearance certificate, which is valid for 120 days from date of issue.

The transfer duty receipt

In order to register the transfer of a property, a transfer duty receipt which proves payment (or alternatively a transfer duty exemption receipt where the transaction is exempt from transfer duty) must accompany every deed of transfer.

Transfer duty is the amount payable to the South African Revenue Services by the purchaser of a property. It is a tax levied by law on the transaction and is calculated on the fair market value (usually the purchase price) of the property. The current rates of transfer duty are as follows:

<table>
<thead>
<tr>
<th>Value of Property (R)</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 600 000</td>
<td>0%</td>
</tr>
<tr>
<td>600 001 – 1 000 000</td>
<td>3 % of the value above R600 000</td>
</tr>
<tr>
<td>1 000 001 – 1 500 000</td>
<td>R12 000 + 5% of the value above R1 000 000</td>
</tr>
<tr>
<td>1 500 001 and above</td>
<td>R37 000 + 8% of the value exceeding R1 500 000</td>
</tr>
</tbody>
</table>
Transfer duty must be paid within six months of the date of acquisition by the purchaser. Thus the application for a transfer duty receipt must be submitted within 6 months after acceptance of the deed of sale by both parties. A penalty is levied on late payments. When applying for a transfer duty receipt on payment of the required sum, a transfer duty declaration must be completed. Please refer to Annexure J for an example. The details of the parties concerned, date of purchase, property description and the purchase price must be filled in. The identity numbers of natural persons and the registration numbers of juristic persons as well as their tax numbers must also be indicated on the declarations. If a transaction is cancelled before registration or is dissolved by operation of a resolutive condition, duty is payable on that part of the consideration which has been paid to and retained by the seller and on any consideration payable by either party to the transaction for or in respect of the cancellation.

In the declaration, a seller has to state that the purchaser is the only person who has ever purchased the property from him and that he has not at any time sold the property to any other person, or he must give particulars in regard to such previous sale and its cancellation and the duty, if any, paid thereon.

Certain transactions are exempt from transfer duty and under certain circumstances Value Added Tax (VAT) may apply to the sale instead. If the seller is a VAT vendor, VAT is payable on the purchase price. Where VAT is payable, the purchaser will not pay transfer duty.

Consents which may be necessary

Consents necessary in terms of title conditions

The title deed may contain conditions which, if not absolutely prohibiting the transaction which it is proposed to register, may at least mean that:

- the consent of some other person must be obtained; or
- that person may have to be a party to the deed or may have to cancel his rights by the registration of a deed of cancellation.

**EXAMPLE**

- Pre-emptive right (that is, the right to buy before anyone else – the right of first refusal).
- Consent of a Home Owners Association. e.g. The property may not be transferred without written consent of the “Waterkloof Home Owners’s Association”.

Consents necessary in cases of subdivision

As a general rule, subdivision of land is not permitted without the consent of some authority or other, perhaps more than one in respect of the same subdivision. Furthermore, many titles contain restrictions on subdivision imposed servitudinally. This means the holder of the right will also have to consent to the subdivision before registration can take place, irrespective of whether statutory permission has been obtained or not. However, the restrictions may be removed at the instance of the owner of the land or the administrator of the province.
**Financial aspects**

The transfer of property inevitably involves financial aspects and any delay or miscalculation can cause financial loss for the client (and maybe the conveyancer).

**Cancellation figures**

As soon as possible after the receipt of instructions it must be ascertained whether there is an existing bond over the property (that is, if the seller has registered a bond over the property). The easiest way to confirm this is to check the computer printout from the deeds office.

If there is an existing bond, the bond holder must forward the following:

- the holding title deed so that the new deed of transfer can be drafted;
- the cancellation figures (that is, the amount the seller still owes the bank and is required to pay the bank to cancel the bond); and
- the name of the conveyancer who will prepare the cancellation.

Once the cancellation figures have been obtained, the guarantees can be requested from the attorneys attending to the registration of the mortgage bond (that is, the purchaser’s bond).

**Guarantees**

Guarantees are issued by the bank which has granted the purchaser a loan of the purchase price (or part thereof). They guarantee payment of specified amounts to specified persons or institutions, on registration of transfer of the property into the name of the purchaser. In other words, the bank guarantees that they will pay a certain sum of money to another bank or a person when the transfer is registered in the name of the purchaser.

The cancellation figures obtained from the existing bond holder will determine how the guarantees should be requested.

**EXAMPLE**

A mortgage bond is granted for R90 000, the purchase price of the property is R100 000, and the outstanding balance on the existing mortgage bond with Standard Bank (the cancellation figure) is R55 700, plus interest on such amount at the rate of 21% per annum, the request for guarantees would be as follows:

A guarantee in favour of Standard Bank for the sum of R55 700 plus interest at the rate of 21% per annum, calculated from 24 February 1997 until date of payment, both days inclusive, payable at Cape Town for the credit of Peter Gary Brown, Account No. 12345676.

A guarantee in favour of the transferring attorneys for the balance of the loan, minus interest as set out above, and payable at Cape Town.

When these guarantees are received they must be checked carefully and the original guarantee in favour of the existing bond holder must be sent to the conveyancer attending to the cancellation. The original guarantee for the balance of the purchase price must be retained on file, as well as a copy of the guarantee sent to the existing bondholder’s attorneys.
Outstanding balance of purchase price

If the purchaser's bond does not cover the full purchase price, then it must be confirmed that the full purchase price will be available at registration.

If the purchaser has paid a deposit and this represents the balance of the purchase price, then it must be established to whom the deposit was paid:

- If it was paid to the transferring attorneys to be held in trust on behalf of the purchaser then there is no problem.
- If it was paid to the estate agent to be held in their trust account then arrangements must be made for the deposit (less the estate agent's commission if so agreed) to be paid over to the transferring attorneys on registration of transfer.

If no deposit was paid then arrangements must be made with the purchaser to pay the balance to the transferring attorneys on registration of transfer (preferably a few days before). If a large sum of money is involved it may be advisable to obtain, at an early stage, a guarantee from the purchaser's bank that he has such monies available and that such monies will be paid over on registration of transfer.

If the purchaser is selling his own property, which transfer is to take place simultaneously with the property he has purchased, then arrangements should be made with the firm of attorneys attending to that transfer to give a written undertaking to effect payment of the shortfall out of the proceeds of the sale of the purchaser's property.

Fees

The purchaser should have been provided with a pro forma invoice shortly after instructions were received setting out the estimated costs involved in the transfer. The purchaser should be requested to pay a certain amount into trust immediately in order to cover the costs of, for instance, the rates clearance certificate, deeds office searches. The balance of the fees (including transfer duty) should be requested a few days before transfer is to be registered.

This money will be held in trust and only once the transfer has been registered can the conveyancer debit his fees.

Lodgement of documents

Lodgement of deeds

In terms of regulation, all deeds, bonds, documents and powers of attorney must be lodged for examination by a notary or conveyancer practising at the seat of the Deeds Registry. The Registrar is entitled to determine between what hours on working days the lodgements may be made.

Deeds lodged for execution before the Registrar, for example, deeds of transfer or mortgage bonds, are lodged in different covers from deeds and documents already executed and which only require to be registered, for example:

- notarial bonds; and
- antenuptial contracts.

Only one deed for execution and one transaction for registration are allowed in each cover.

The design of the covers varies slightly depending upon the registry and in some registries each firm is allocated a distinctive colour for its covers. This makes it easier to find a particular firm's cover among a lodgement of several hundred covers.
In the large registries a lodgement cover is a printed document requiring completion as to the various particulars by both the lodging conveyancer and the staff of the registry. Firms are provided with numbers so that a conveyancer lodging a transaction does not fill in the firm's name on the cover but only its number. The conveyancer must also indicate the nature of the deed or document lodged in the cover and the number of any registered title or other deed or document lodged in support thereof. He must also indicate the 'linking' of his transaction with other transactions.

See Annexure E for an example of a completed front cover of a lodgement cover. Note that in practice it is a folded cover of sturdy paper, with details to be recorded on the outside and the documents inserted into the cover.

**Linking of deeds**

As we have seen above, the conveyancer must indicate the 'linking' of his transaction with other transactions.

'Linking' refers to the numbering of deeds and documents lodged for execution or registration into a 'batch' of deeds. Once such a batch has been created, none of the constituent transactions of that batch can be executed or registered separately from the others in the batch and all deeds in the batch will be examined, executed and/or registered simultaneously at the deeds office.

In terms of section 13(1) '. . . no . . . deed, document or power (of attorney) which is one of a batch of inter-dependent deeds, documents or powers of attorney, intended for registration together, shall be deemed to be registered until all the deeds, documents or powers of attorney or the registration endorsements in respect thereof, . . . . have been signed by the Registrar'. Therefore, if a Registrar should inadvertently have executed or registered only part of a batch, he must cancel the execution or registration.

Section 13(1) is clearly an exception to the general rule as stated in section 6(1): '. . . no registered deed of grant, deed of transfer, certificate of title or other deed conferring or conveying title to land, or any real right in land other than a mortgage bond, and no cession of any registered bond not made as security, shall be cancelled by a Registrar except upon an order of Court'.

When a deed or document is lodged for execution or registration and it is intended that it be executed or registered in conjunction with any other deed or document lodged, the conveyancer responsible for the lodgement must indicate in the manner approved by the Registrar (that is, on the cover) that the deeds or documents will be executed or registered simultaneously. If the conveyancer does not do so, any deed or document may be executed or registered independently of any other deed or document. Section 6(1) would, in this type of case, prohibit any subsequent cancellation.

Note that the reason for linking deeds is usually, but not always, financial.

**EXAMPLE**

If a conveyancer lodges a transfer deed and a mortgage bond by which part of the purchase price is to be advanced to the purchaser, he will obtain a guarantee from the building society for payment of that amount subject to the registration of the bond.

If the conveyancer forgets to link the two transactions, the bank would not pay out and the conveyancer would then probably find himself liable to pay interest to the seller until the bond is registered and the purchase price paid.

Deeds are also very often linked because the seller of one property is the purchaser of another property which has been purchased out of the proceeds of the first property.
Non-financial reasons for 'linking' include transfers from a common title and releases from a common bond.

In order to give effect to the 'linking' procedure, every deed for execution and every deed or document for registration is designated as a unit. Documents supporting the registration of a unit are not regarded as units, for example, the power of attorney to pass transfer from the owner, affidavits and other documents which must accompany a deed of transfer. (A mortgagee's consent to the cancellation of a bond is a unit as the cancellation must be registered).

The numbering system works as follows:

Let’s say that there are four deeds in our batch, one is a transfer deed, two are cancellation of existing bonds and there is a new bond. The covers of the units making up the batch would be numbered as follows:

4/1T The Deed of Transfer
4/2BC Cancellation of Existing Bond
4/3BC Cancellation of Existing Bond
4/4B New First Mortgage Bond

The first figure gives the total number of units in the batch and the last figure the position of the unit in that batch. Each unit is lodged in a separate cover. The various units making up the batch may of course have been lodged by the same firm or by different firms. Consequently each cover must not only bear its linking number but it must also indicate the number of the firms lodging the other deeds in the batch and the nature of the other deeds in the batch. All the firms concerned must also agree to the day of lodgement. On that day, deeds are lodged separately and linked up by the Deeds Office officials.

As soon as the transfer documents are ready and the attorneys (if any) attending to linked transactions are ready, simultaneous lodgement must be arranged.

The following documents must be lodged in a white cover:

- deed of transfer;
- power of attorney;
- existing/holding deed;
- transfer duty receipt;
- rates clearance certificate; and
- any other documents specifically required to be lodged in respect of the transfer.

The jacket or lodgement cover must be filled in accordingly.

**Examination of deeds**

The Registrar of deeds is responsible for examining all deeds and other documents which are submitted to him for execution or registration. After examining the deed or document he has the power to reject such deeds or documents which cannot be executed or registered in terms of the Deeds Registries Act or any other law, or where there is a valid objection against such execution or registration.

The Registrar does not have to examine the deed or document in its entirety before deciding to reject it and has the power to direct that the further examination of the deed or document be postponed until the defect has been rectified.
The letters 'P' (passed) or 'R' (rejected) are inserted on the lodgement cover to indicate whether the deed has been passed or rejected for execution or registration. A deed rejected without examination is marked 'R(NE)' and one on which examination is incomplete, 'R(NFE)' (Not examined or not fully examined).

Every deed or document lodged is subjected to examination by a junior deeds controller, then by a senior deeds controller and then the deeds go to an assistant registrar.

- The first examiner checks the linking of batches, makes all rubber-stamp endorsements, verifies that there are no interdicts or caveats against or affecting registration and does a full examination.
- The second examiner does a further full examination paying attention to legal implications and either amplifies the notes raised by the first examiner, allows them to stand or removes those which he believes are not warranted in law or practice. He then 'passes' or 'rejects' the deed or document. Naturally, if he rejects one or more deeds in a batch, he must reject all.

After complying with minor notes raised, a conveyancer will usually take the deed to the first examiner for removal of the notes. More involved matters will be taken to the senior examiner for discussion and if he refuses to remove the note, the next step would be to approach the Assistant Registrar. A further 'appeal' lies to the Deputy Registrar and then to the Registrar himself and ultimately to the court. A Registrar of Deeds might decide to consult with the Chief Registrar or the State's legal advisers but he is not bound to do so, nor is he bound to accept the opinions of either.

**Preparation of deeds by the conveyancer**

Provided the deed (or batch of deeds) was not rejected, it will come up for preparation in the deeds office the day before it is due to be registered. At this time the following must be attended to:

- all queries raised by the deeds office examiners must have been addressed and must have been removed by the examiners concerned;
- the financial aspects of the transaction must be in order. Provision must have been made for the payment of the purchase price and the conveyancer's fees and disbursements; and
- if the conveyancer is acting on behalf of correspondents, their specific instructions to proceed with the registration must be obtained.
- If the deed is linked to other deeds prepared by another conveyancer from a different firm, the conveyancer will have to confirm that all the deeds in the set or batch will proceed to execution simultaneously.

Deeds can be held over at preparation for five days. This concession allows the conveyancer to ensure that the necessary finances are in place, whereafter they will automatically rejected. Should the conveyancer want a deed to proceed to execution within the five days, he will have to mark the deed according to the practice of the deeds office concerned ("hand in for execution / registration").
Note
After the expiry of the five-day period, the deeds are rejected if they have not been executed / registered and must go through the whole period of examination again. This is known as 'rejection after five days'.

Execution / Registration

It is the practice to allow deeds which been “handed in for execution” to be executed on the day they come up, or the following two days, if not, they are rejected and must be re-lodged.

The Registrar has the power to advance a deed for execution to a date earlier than normal. This is known as ‘putting forward’ (expediting) a deed and is only permitted after written application to the Registrar and ‘on good cause shown’. The conveyancer must also certify that he is not making the request to avoid any pending interdict against any party to the transaction or the property concerned. In practice, deeds are rarely expedited.

Registration

Once the Registrar has signed the deed, it is registered.

After the deed has been registered it will be numbered (for example, T1234/97) and then microfilmed together with the other documents lodged with it (for example, the clearance certificate). Deeds and documents are numbered and filed under a system of code letters in order to simplify the capture of the registration data on computer and microfilm.

Endorsements of deeds are made on back pages of a deed or on a blank page annexed to the deed by the Registrar. Blank pages and pages added are numbered by the Registrar commencing with the number after the number of the last page of the deed.

Deeds may, with certain exceptions, be prepared or typed only on one side of the paper so that if a three-paged deed is lodged, the Registrar will number the back of page 1 as page 4, the back of page 2 as page 5 and so on, and will use these pages for endorsements. In most cases, only one endorsement per page is allowed. Therefore, the microfilm images will appear in order, that is, the first three pages of the actual deed numbered 1 to 3 by the conveyancer and then pages 4 onwards as endorsements by the Registrar.

When a registered deed is filmed, all the documents filed with that deed are also filmed. Once a deed and its supporting documents have been filmed, nothing further must be filed with those documents. Supporting documents are filed under code letters. Examples include consents by bond holders, and applications for amendment of deeds.

The deed will then be returned to the conveyancer.

Finalisation of the file

As soon as the registration of transfer has taken place, all parties concerned must be informed telephonically of the registration. Confirmation in writing must also be given.

All guarantees must be presented for payment at the institution which issued it and all monies provided for by letters of undertaking must be collected.

As soon as all the funds are available, the conveyancer must prepare the final statements of account for the seller and the purchaser. If there is any money owing,
either to the seller or to the purchaser or both, then payment must be made to them together with the final statement.

If the conveyancer was authorised to effect payment of the estate agent’s commission to the estate agent, he must do this.

Only once the conveyancer has received the new title can he consider closing his file. If the property is bonded, then the title deed must be forwarded to the attorneys who registered the bond. If there was no bond registered, then the title deed must be forwarded to the new owner. Once it has been confirmed that the new title deed has been received, then the file can be closed.

**Sequence of transfers of land and cessions of real rights**

Section 14 of the Act contains the important principle that all successive transactions in land and cessions of real rights in land must be registered in sequence by separate transfer deeds or cessions. No step may be omitted. This rule applies unless

- the Deeds Registries Act provides for an exception;
- any other act provides for an exception;
- the court makes an exception.

The implication of the section is that if A sells to B and B sells to C without having taken transfer or cession of rights from A, and C sells to D, A cannot pass transfer or cede directly to D. A must pass transfer to B, B to C and C to D.

**EXAMPLE**

An example where the court makes an exception is the following:

A purchaser of property may be in a position to prove that he has bought and paid for the property and is entitled to transfer. He may well be unable to get transfer because the seller (the registered owner) has either disappeared or has not himself obtained title to the property. It often happens that successive purchasers have obtained the right of ownership in the property concerned, but for one reason or another have not obtained registered title.

**Shares in land**

Section 102 of the Deeds Registries Act defines a ‘share’ in relation to land and rights in minerals as an undivided share. No transfer of an undivided share in land, which is intended to represent a defined portion of land, may be registered. (Section 24(1).) An owner who holds a share in land does not hold title to a defined piece of land even though in actual fact he may, by arrangement with his co-owners, have been given occupation of a separated piece of land. The title, which he has, is to an undivided share only in the whole unit of land held in joint ownership, a portion of which he occupies.

Therefore, the portion of land, which he occupies, is owned jointly by him and the other co-owners of the whole unit and if he builds a house on the portion which he occupies, the house will be jointly owned as well.

A joint owner can have his ownership of a share in land converted to ownership of a defined portion in that land by agreeing to partition the land and to award defined portions or a share in certain defined portions instead of shares in the entire property. Remember that there is a strict control over the subdivision of land and the further dividing up of shares in land, as well as the physical division and use of the land. Partition may not always be possible.
Whenever an undivided share in land is being dealt with the term ‘share’ must be used, which must be expressed as a fraction in its lowest terms.

In terms of section 22(1) if A owns a piece of land and B owns another piece of land, A and B cannot together transfer both pieces of land to a common transferee in one deed of transfer. They must each pass transfer in a separate deed of transfer. In other words, every transferor in a deed of transfer must own a share in each of the properties conveyed therein. One deed of transfer is allowable if authorised by any law or by an order of court. The section only applies to deeds of transfer and not mortgage bonds. Clearly then A and B could mortgage both pieces of land in one bond.

However, if A owns more than one piece of land, he can transfer all pieces of land to one of more transferees of such pieces of land in one deed of transfer, as long as each piece is described in a separate paragraph. Similarly, if two or more persons own two or more pieces of land in shares, they may give transfer of these pieces of land in one deed to one of more transferees, as long as each piece of land is described in a separate paragraph.
MORTGAGE BONDS

Background

Mortgage bonds are registered over immoveable property. The purpose of a bond is to secure an obligation. This would apply for example when the purchaser approaches a bank or financial institution to borrow money to purchase the property. If the bank lends the purchaser the money, he will have an obligation to pay the amount borrowed back to the bank or financial institution.

By registering the bond in the Deeds office the contractual right (personal right) between the bank and the debtor (purchaser) becomes a real right, which is enforceable against ‘all the world.’ Thus, if the purchaser defaults with payment and cannot meet his obligations, the bank can sell the property and utilise the proceeds of the sale to satisfy the claim. Further, if the Purchaser becomes insolvent the bank will have what is regarded as a preferent claim over the property. Lastly, if the purchaser wants to sell the property, he can only do so once the bond has been cancelled and the bank has been paid back in full.

Please note when dealing with bonds one would refer to the bank or the party lending the money as the mortgagee, and the party who borrows the money as the mortgagor.

A notarial bond differs from a mortgage bond in that a notarial bond is registered over movable property and a mortgage bond is registered over immoveable property.

Procedure for the registration of a mortgage bond

On receipt of instructions to register a bond the conveyancer must open an office file and complete the office administration with regard to the opening of new files.

The conveyancer must send an acknowledgement of receipt to his client from whom the instructions were received.

The conveyancer must advise the mortgagor (the person over whose property the bond is to be registered) that he is attending to the registration of the bond and obtain all the necessary personal particulars.

The conveyancer must perform a search at the deeds registry (that is, he must obtain a computer printout) to get particulars relating to the property to be mortgaged and the mortgagor (see Annexure D). There may be an existing bond over the property registered by the seller which needs to be cancelled or there may be an interdict recorded against the mortgagor (or his property).

If the bond is to be registered simultaneously with the transfer of the property into the name of the mortgagor then the conveyancer must obtain the names of the attorneys attending to the transfer. A letter must be sent to the transferring attorneys confirming that the bond registration is being attended to, the amount for which the bond will be registered and the amount available for guarantees and requesting:

- the details of the guarantees required by the transferring attorneys;
- a copy of the draft deed of transfer (to be used when drafting the bond);
- the particulars of any other simultaneous transactions; and
- that they will forward the title deed to you on receipt thereof from the deeds registry.

If the mortgagor is already the registered owner of the property and there is no bond registered over the property then he should be in possession of the title deed.
Once the title deed or draft deed has been received, the conditions of title must be checked to see whether there is any prohibition against mortgaging the property. If there is, then the necessary consent to mortgage the property must be obtained.

**Preparation of bond documents**

In addition to the documents discussed in the above Chapter and which serve the same purposes (i.e. personal affidavit if dealing with a natural person, resolution in the case of a juristic entity, insolvency affidavit, FICA affidavit, pro-forma invoice), the conveyancer would prepare specific documents as instructed by the bank in connection with the mortgage bond such as the loan agreement and authority for payment, as well as the power of attorney to mortgage and the mortgage bond for registration.

**The power of attorney to mortgage**

The Deeds Registries Act provides that a mortgage bond must be executed before the Registrar by the owner of the immovable property or by a conveyancer duly authorised by the owner by a power of attorney. A general power of attorney must contain specific authority to mortgage immovable property.

The power of attorney to mortgage authorises the attorney to attend to the registration of the bond in the Deeds Office. The power of attorney to mortgage is similar to the power of attorney to pass transfer.

The power of attorney to mortgage must contain all the facts and conditions which are to be reflected in the bond and only minor departures are permitted in the bond. Many conveyancers prefer to annex a draft copy of the bond to a shortened form of power authorising the passing of a bond corresponding to the draft. See Annexures K and L for an example. Care should be taken to ensure that all the pages of the draft have been initialled by the mortgagor and witnesses and that the power of attorney identifies the draft.

Section 50A absolves the Registrar and the examiners from checking the terms and conditions of a bond. All the Registrar has to do is to satisfy himself that the document before him is a mortgage bond duly and properly authorised by the owner concerned to be registered against the owner’s title.

In terms of regulation 44A, the preparer of the power of attorney is responsible for:

- ensuring names, identity numbers and marital status stated in the power are correct;
- ensuring that persons acting in a representative capacity have been duly appointed; and
- that the necessary authority has been obtained for the signing of the power on behalf of a company, church, association and so on, and is authorised by the deed or constitution or regulations of that body.

The power must contain a preparation certificate.

**Analysis of a mortgage bond**

Other than for Deeds of Transfer, Certificate of Registered Title, Certificates of Rights to Minerals, and so on, where many regulations to the Deeds Registries Act apply, only a very few prescribed forms exist for Mortgage Bonds. The only prescribed form that exists is those of a collateral bond (Form KK) and a surety bond (Form LL). All other bonds are prepared adhering to the accepted forms for the bonds.
Structure of a 'standard' mortgage bond

Please note that mortgage bonds are prepared according to the accepted forms and that very few prescribed forms exist. The structure of the most commonly used form of bond is as follows:

1. Preparation certificate
2. Heading
3. Preamble (mortgagor)
4. Acknowledgement clause (mortgagee)
5. Cause of Debt (amount, causa)
6. Conditional Clauses
   - Interest and Repayment
   - Costs Clause
   - Continuing Covering Security
7. Ranking Clause
8. Property Clause
9. Execution Clause

**Preparation certificate**

As in the case of a deed of transfer.

**Heading**

The term 'mortgage bond' can be used irrespective of the exact nature of the bond.

**Preamble**

The preamble gives the names of the appearer, the date and place of execution of the power of attorney under which he acts, the name of the mortgagor and the marital status of the mortgagor. 'Mortgagor' is described exactly as a transferor would be described in a deed of transfer.

**Interest and repayment clause**

It is not required that the interest rate be mentioned in the Mortgage bond; it is accepted that the interest rate be adapted from time to time as agreed by the mortgagor and mortgagee.

**Costs clauses**

The costs clause is also known as the additional amount as stated in the Mortgage Bond. It provides security of payment to the Mortgagee from the Mortgagor. (For example, if the Mortgagor fails to repay the bond, the Mortgagee is also covered for any costs that might occur in the process of reclaiming owed monies)

**Continuing covering security**

It provides security for the amount of the existing bond and any further bonds the mortgagor might utilize. It also states that the mortgage is not automatically ceded on payment of the debt by the mortgagor
**Ranking clause**

This indicates where the bond is ranked, in other words if it is a first, second or third bond. This will indicate the preference of the creditor in respect of security of debt against a particular property.

**Property or security clause**

This clause contains the legal property description of the property being bonded,

**Execution clause**

The Deed needs to be executed in the presence of the Registrar, by the owner of the property being bonded. The conveyancer will appear on behalf of the mortgagor and execute the deed in front of the Registrar. A bond is validly registered when the Registrar of deeds places his signature on it in terms of section 13, and the fact that the Registrar fails to endorse the title as to the bond does not invalidate the bond.

**Lodgement and registration**

If the bond is to be lodged simultaneously with other deeds (for example, the transfer) then the attorneys attending to the transfer must be contacted in order to ascertain whether they are ready to proceed.

The following must be lodged:

- the power of attorney to mortgage;
- the mortgage bond;
- the title deed (if not lodged separately); and
- any consents which may be required.

The client (that is, the bank) must be advised of lodgement. On date of registration of the bond, the mortgagee (the bank) must be notified immediately so that they can prepare to pay the guarantees they have issued.

**Finalisation of office file**

After the bond has been returned from the deeds office together with the title deed if no simultaneous transfer was registered, both must be forwarded to the mortgagee. If transfer of the property bonded was registered simultaneously, then the attorneys who attended to the transfer should forward the new title deed to you. The new title deed together with the bond must then be sent to the bond holder (the mortgagee).

Before closing the file it must be checked that the account has been paid and that confirmation of receipt of the bond has been received.

**Procedure for the cancellation of a mortgage bond**

A property over which a mortgage bond has been passed cannot be transferred without the disposing of the mortgage bond. The method of disposing of the bond is to cancel it. In order to cancel a bond the consent of the mortgagee must be obtained for lodgement in the deeds registry.

**Receipt of instructions**

On receipt of instructions to attend to the cancellation of a bond, the conveyancer will usually be advised of the amount of money still owing by the mortgagor to the
mortgagee (that is, the bank). The conveyancer should request a guarantee from the transferring attorneys for the payment on transfer of the amount outstanding, in the event of there being a simultaneous transfer.

If there are no simultaneous transactions, then the mortgagor must make a cash payment of the amount outstanding.

**Preparation of consent**

Please refer to Annexure M for an example.

The consent to cancellation must be prepared in the prescribed Form MM in the regulations to the Deeds Registries Act.

The consent must be prepared and the preparation certificate signed by a practising attorney or conveyancer. If an attorney signs the prep certificate, it must be countersigned by a conveyancer (as in the case of a power of attorney).

The description of the mortgagee and mortgagor must comply with the provisions of the Act. It is acceptable to describe the mortgagor as set out in the title deed.

In the event of a company, close corporation or financial institution being the mortgagee, the powers of signature of the mortgagee must be obtained for the records of the conveyancer. Two witnesses must witness the consent.

**Lodgement**

The consent to cancellation and the mortgage bond must be lodged in the deeds registry. If the title deed is not lodged by a simultaneous party, it must also be lodged with the consent and mortgage bond.

After the cancellation of the bond and the documents have been returned to the conveyancer, the cancelled mortgage bond must be returned to the former mortgagee. This is because even though it has been cancelled, it still constitutes an acknowledgement of debt.

The title deed must be forwarded to the owner of the property, but if another mortgage bond is registered over the property, then the title deed should be delivered to the attorneys who attended to the registration of that bond.
APPLICATIONS

Application for a copy of a lost, destroyed or unserviceable deed in terms of regulation 68

An application under this regulation must contain a preparation certificate in terms of regulation 44 as it is an application for ‘filing of record’. Regulation 68 provides for the replacement of the owner’s copy of ‘any deed conferring title to land or any interest therein or any real right, or any registered lease or sub-lease or registered cession thereof or any mortgage or notarial bond’ by a copy certified by the Registrar. If the Registrar is satisfied that a deed has been inadvertently lost, destroyed, defaced or damaged, a certified copy thereof may be issued at a fee.

Regulation 68 (1)

Regulation 68 (1) provides for obtaining a copy of a deed or bond to serve instead of the original if the original has been lost or destroyed. Refer to Annexures N and O for an example.

The owner or his agent must sign the application. The applicant must provide an affidavit describing the deed and stating that it has not been pledged and is not being kept by any person as security for debt or otherwise. The application must also state that a diligent search has been made for the original and if possible must describe the circumstances under which it was lost or destroyed. The Registrar may call for further evidence if he so requires.

If the land, interest or real right held under the deed is mortgaged, or the owner has conferred a real right therein on some person who may therefore be in possession of the deed, or in the case of a bond which has been ceded, the Registrar requires:

- that the mortgagee or the person who has received the real right or the person to whom the bond has been ceded state in writing that the deed or bond or cession is not in his possession; and
- that he consents to the issue of a copy to the applicant.

Note

The affidavit and application can be contained in one document in affidavit form.

If the property is mortgaged, the mortgagee must consent to the issue of a copy.

If the applicant alleges that he at no time had possession of the deed, for example, that he never received it from the conveyancer who at one stage had possession of it. In this case an affidavit should be lodged from the person who last had possession of the deed.
EXAMPLE

Example of a consent by a mortgagee

STATEMENT

Prepared by me

Conveyancer

ANDREW SMITH

I, the undersigned, JOHN RAYMOND FORTUNE (born 5 March 1939) (Unmarried), the legal holder of the Mortgage Bond No. 5123/1950 for R7 000.00 passed by JOSEPH HENRY (born 7 January 1927) in my favour, do hereby state that transfer deed No. 803/42 is not in my possession and do hereby consent to the issue to the said JOSEPH HENRY of a certified copy thereof under the provisions of reg. 68(1) of the Deeds Registries Act 47 of 1937.

Signed at ............... on this ........... day of ....... 19….

(Sgd) J R Fortune

Regulation 68 (8)

Regulation 68 (8) is used when a deed has become unserviceable. Application is made as above, however the applicant will give reasons why the deed is unserviceable and the original deed must be lodged with the application.

Regulation 68 (11)

Where a bond has been lost or destroyed and the bondholder wants to cancel the bond it is not necessary to apply for a substitute copy of the bond before cancellation thereof. Regulation 68 (11) sets out the procedure to be followed. Application must be made on affidavit as follows:

Example of application and affidavit combined-cancellation of a bond in terms of regulation 68(11):

AFFIDAVIT

Prepared by me

Conveyancer

ANDREW SMITH

I, the undersigned, GRACE MURPHY (born Head on 30 December 1940) married out of community of property, do hereby make oath and say:

1. I am the holder of Mortgage Bond No. B11241/74 passed by Daisy Bloom (born Martell on 4 April 1930), a widow, for the sum of R50 000 in my favour.

2. That I destroyed the above bond when Mrs Bloom made the final instalment of repayment some time in December 1974. I did not realise or know that the bond had to be formally cancelled in the Deeds Office.

3. The said bond has not been pledged and is not being detained by anyone as security for debt or otherwise, but has actually been destroyed as stated above.

4. I hereby apply for and consent to the cancellation of the aforementioned bond.

(Sgd) G MURPHY
Application for the amendment of deeds and documents

Refer to Annexure P for an example.

In terms of section 4(1)(b) of the Act, application can be made to the Registrar of deeds for the rectification of any registered deed or document in which the description of a person or property mentioned therein is incorrectly given or, in the event of an error in the conditions affecting the property held thereunder, provided that:

• if the error appears in more than one deed or document, all must be amended simultaneously;
• all parties concerned (for example, the bond holder) must consent in writing to the amendment;
• if any party concerned refuses, amendment may be made by order of court; and
• in the event of such rectification, it must be stated that no transfer of any right is brought about as a result of the amendment.

In practice, the usual reason for this application is that names have been misspelled or identity numbers incorrectly inserted.

The application must be accompanied by an affidavit from the owner/applicant or his authorised agent, setting out the following content:

1. the nature of the error;
2. the rectification required;
3. a description of all the deeds to be amended; and
4. that there are no further deeds in the relevant deeds registry which require amendment.
REAL AND PERSONAL RIGHTS

Personal rights establish a legal relationship between two persons. A personal right is a right entitling a person to claim from another some thing or act or even that he should refrain from doing an act. In general, it is a right against a person by a person claiming something due or restraining him from doing something.

Real rights establish a legal relationship between a person and a thing (property). A right is usually defined as ‘real’ when it entitles the holder of that right to enforce it for himself against all the world. It is a right which cannot be contested. Registered ownership, servitudes, long leases or mortgagee’s rights under a mortgage bond are real rights in land.

The sum total of all real rights in land is absolute ownership, entitling the owner to use, possess, alienate and even destroy what he owns. However, absolute ownership can be broken up into the constituent real rights, most of which can be owned by a person other than the absolute owner, thus diminishing the owner’s total rights of ownership.

Servitudes

A servitude is a right which one person has in the property of another. The owner of land which is subject to a servitude holds a diminished ownership as the right can only be exercised subject to the rights of the servitude owner. The separated right need not be a positive one, entitling the holder to exercise one of the rights of ownership, but can be a negative one restricting or restraining the owner from exercising a certain right, for example, prohibiting him from building so as to interfere with his neighbour’s light.

Personal Servitudes

A personal servitude is a right which one person has over the property belonging to another. We can divide personal servitudes into positive and negative servitudes.

In the case of a positive personal servitude, the owner of the land burdened must allow the beneficiary exercising some right or benefit on or over his property.

EXAMPLE

A usufruct (the most important personal servitude) grants the usufructuary a limited real right to use the thing of another and the fruits thereof with the obligation to eventually return the thing essentially intact to the owner.

A negative personal servitude merely prohibits the owner from exercising one or other of his normal rights of ownership – it restricts his rights by giving the beneficiary a right of refusal. Such negative servitudes are generally known as ‘restraints’. Most ‘conditions’ in deeds, especially in urban properties, whether imposed under statute or by the transferor are restraints, for example, prohibiting the owner from subdividing without consent.

Praedial Servitudes

A praedial servitude is a servitude which one property has over another, irrespective of who owns the property.

EXAMPLE

A right of way which one property has over another property.
Certificate of consolidated title (Section 40)

Where two or more pieces of land sharing a common borderline are owned by the same person, or by two or more persons in the same undivided shares, and have been consolidated into one erf, the owner(s) may apply for the issue of a certificate of consolidated title.

- A consolidated title diagram of the consolidated property must be annexed to the application (in duplicate). Such diagram must be approved by a Surveyor-General.
- The two or more pieces of land must:
  1. be contiguous to each other;
  2. be owned by the same person or by two or more persons holding the same undivided shares in each piece of land;
  3. be registered in the same property register;
  4. be situated in the same administrated district;
  5. be situated in the same province.

The following documents are to be lodged in a white cover:

- The application (signed by all the owners);
- The certificate of consolidated title;
- Two copies of the diagram of consolidated title, approved by the Surveyor General;
- The existing title Deed(s).
Certificate of registered title in respect of a portion of land

Where the owner subdivides his land into 2 or more portions and wishes to hold those portions under separate titles, he may make an application to the effect that a certificate of registered title is issued to him in respect of a portion (or portions) of his land.

Such owner is then entitled to mortgage, lease or register rights over the portions and the resultant remainder separately from each other.

Requirements

- The portions must be surveyed and a subdivisional diagram thereof must be approved by the Surveyor-General; and
- The subdivisional diagram in duplicate must be annexed to the application.

Where the property is situated in a township or settlement or in an area falling under a local authority, approval must be obtained from such local authority.

For the subdivision of Agricultural land written consent must be obtained from the Minister of Agriculture and Land Affairs.

[Please note that it is virtually impossible to obtain this permission, as the rule is that Agricultural land can no longer be subdivided].
DECEASED ESTATE TRANSACTIONS

An estate transfer occurs when the owner of a property is deceased, and that property is being transferred to another person, either an heir or a purchaser in terms of a Deed of Sale.

There are two Acts that are important when dealing with Estate Transfers

- The Deeds Registries Act No. 47 of 1937
- The Administration of Estates Act No. 66 of 1965

Who acts on behalf of the deceased party? The general rule is that an Executor of the estate, appointed by the Master of the High Court, transfers the property out of the estate to the transferee.

Note that:

- If the deceased died with a valid will they are said to have died *testate*.
- If the deceased died without a will or the will was declared invalid, they are regarded as having died *intestate*.

When dealing with estate transfers it is very important to establish if the property you are dealing with was registered in the name of the deceased at the time they died or whether the deceased, *prior to death*, had purchased the property but it had not yet been registered into that person’s name.

- If the property was already registered in the name of the deceased at the time of death then it automatically forms part of his or her estate.
- If the property had been purchased by the deceased prior to death but had not yet been registered in his or her name, then the Executor must ensure that the property is first transferred into the estate of the deceased and then transferred to the heir or purchaser under a separate deed of transfer.

Remember the previous discussion on sequence of transfers.

**Section 42(1) & Section 42(2) Certificates (Administration of Estates Act)**

**Section 42(1) Certificate**

This section is important where you are transferring the property from the estate of the deceased to an heir nominated in terms of a will or in terms of intestate succession.

In terms of the above-mentioned section, the conveyancer must draft a certificate, which is an additional supporting document that is lodged together with your other documents in the lodgement cover, stating that the transfer (or endorsement) is

- in accordance with the liquidation and distribution account.
- It has lain open for inspection; and
- no objection thereto has been received.

Because the conveyancer signs this certificate it is very important to ensure that the above has taken place prior to one issuing such a certificate.
Section 42(2) Certificate

- A section 42(2) certificate is a certificate by the Master of the High Court. One would obtain this certificate if the executor, was passing transfer to a purchaser of immoveable property from an estate.

- The certificate is not a separate document like the section 42(1) certificate as it appears as an endorsement on the Power of Attorney to pass transfer.

- The purpose of this certificate is so the Deeds office has proof from the Master that no objection to such transfer exists.

In order to obtain the Masters consent the following is required:

- the application form JM33 completed and signed by the Executor.
- the written consent (s) to the sale from the heirs; and
- the certified copy of the deed of sale.

Note that transfer duty is payable on these types of transfers; however, heirs and surviving spouses are exempt from paying transfer duty.
Documents to be obtained

- When dealing with a company registered in terms of the Companies Act 61 of 1973 (the “old” Companies Act) the following documents must be obtained:
  - the certificate of incorporation;
  - the memorandum and articles of association;
  - the certificate to commence business; and
  - a resolution of directors.

- When dealing with a company registered in terms of the Companies Act 71 of 2008 (the “new” Companies Act) the following documents must be obtained:
  - the registration certificate;
  - the notice of incorporation;
  - the memorandum of incorporation; and
  - a resolution of directors.

Description of a company

In the power of attorney, application or consent, as a person must sign the power on behalf of the company, the name of the person who signs the document on behalf of the company must be disclosed and reference must be made to the resolution under which he or she is authorised to sign.

**EXAMPLE**

Harry Potter duly authorised hereto by a resolution of the directors of
Wizards R Us Proprietary Limited
Registration Number 2003/012345/07

In the deed itself, no reference is made to the director’s name or the resolution.

**EXAMPLE**

Wizard R Us Proprietary Limited
Registration Number 2003/012345/07
Documents to be obtained

When dealing with a close corporation the following documents must be obtained:
- the certificate of incorporation;
- the founding statement;
- a resolution passed by members; and
- a written consent required for the acquisition or disposal of immovable property.

Description of a close corporation

In the power of attorney, application or consent, as a person must sign the power on behalf of the close corporation, the name of the member, who signs the document on behalf of the close corporation, must be disclosed and reference must be made to the resolution under which he or she is authorised to sign.

**EXAMPLE**

Ron Weasley duly authorised hereto by the members of Abra-ka-dabra CC
Registration Number 2003/006789/2

In the deed itself, no reference is made to the member’s name or the resolution.

**EXAMPLE**

Abra-ka-dabra CC
Registration Number 2003/006789/2
### SECTIONAL TITLES

#### Introduction

Before the promulgation of the Sectional Titles Act 66 of 1971 on 30th March 1973, it was not possible to register title to a building or part of a building in the deeds registry. The diagram of a piece of land approved by the Surveyor-General under the Land Survey Act 9 of 1927 only reflected the boundaries and beacons of the land shown thereon. The diagram does not show buildings or other improvements on the land and it was therefore not possible for the Registrar of Deeds to register title to buildings erected on the land shown on a diagram approved under Act 9 of 1927.

The Sectional Titles Act introduced a three-dimensional concept in respect of the land and buildings thereon. The Act made provision for the preparation of a sectional plan which had to be prepared and signed by a qualified land surveyor or an architect. This plan consists of several sheets. One of these, called a block plan, shows the boundaries and beacons of the land and floor plans of any buildings erected on the land which has to be defined in relation to at least two boundaries on the land. Another sheet reflects the elevational aspect of buildings on the land.

The Sectional Titles Act 66 of 1971 was repealed and replaced by the Sectional Titles Act 95 of 1986, as amended.

The Act of 1986 stipulates that a draft sectional title plan prepared and signed by a qualified land surveyor or architect must be approved by the Surveyor-General after he has satisfied himself that it complies with the requirements laid down in the Act. The Registrar of Deeds registers the approved plan.

A separate registry has come into existence in the deeds registry in respect of sectional titles. In the deeds offices we now have:

- a registry dealing with the registration of conventional titles to land and the various acts of registration relating to land; and
- a registry dealing with the registration of sectional titles and the various acts of registration relating to land and buildings as defined in the Sectional Titles Act.

#### Sectional plan

A sectional plan must be prepared and signed by a land surveyor or architect in accordance with the provisions of the Act. A land surveyor must prepare and sign the part of the draft plan which delineates the boundaries of the land in accordance with the relevant diagram or general plan and the location of the relevant building or buildings in relation thereto and also any part of the plan showing any delineation of an exclusive use area of which the boundaries are not represented by physical features of a permanent nature.

A draft plan intended to be approved by a Surveyor-General must comply with the requirements of reg. 5 and consists of several sheets. The submission of the draft sectional plan to the Surveyor-General must be accompanied by a certificate of the local authority signifying its approval of the scheme as reflected on the draft sectional plan.
Application for opening of sectional title register

When a developer receives from the land surveyor or architect the draft sectional plan approved by the Surveyor-General, he will instruct a conveyancer to take the necessary action for the opening of a sectional title register and the registration of the sectional plan in the deeds registry in which the land comprised in the scheme is registered.

Registration of sectional title plans and the opening of the sectional title register

Once the requirements of the Act have been met, the Registrar must register the sectional plan and allot a number to it. He must also open a sectional title register in respect of the land and buildings. With the opening of the register, the Registrar must issue to the developer a certificate of registered sectional title in respect of each section and its undivided share in the common property. See Annexure Q for an example.

(Form C). A certificate of real right in respect of any reservation made by the developer in terms of section 25(1) must also be issued to the developer and a certificate of real right in respect of a right of exclusive use as stated in section 27(1). (FORMS F AND G.) The Registrar must also make the necessary endorsements on the title deed as well as on any mortgage bond.

The Registrar is obliged to notify the Surveyor-General and the local authority of the registration of the sectional plan and provide the local authority with a copy thereof.

Basic sectional titles terms explained

- A section means a section shown on a sectional plan. It is identified by means of a specific number allocated to it.
- The common property consists of the land and those parts of the buildings, which are not sections and which therefore, are not capable of exclusive ownership by one individual. All the individuals who own sections in a Scheme jointly own the common property.

Examples of common property are:
- common stairways;
- external passages;
- roof;
- land;
- lift and landing;
- laundry; and
- swimming pool.

The participation quota is calculated by dividing the floor area of the section concerned by the total floor area of all the sections in the scheme.

The respective owners of the sections own the common property in undivided shares in proportion to the quotas of their respective sections.

The participation quota is the formula used to determine:
- the size of an owner’s undivided share in the common property;
- an owner’s right to vote in cases where the vote is reckoned in value;
- the ratio in which the owner of a section must contribute to the levy fund; and
the amount of a particular owner’s liability in respect of a judgment debt of the body corporate of which he is a member.

• A unit consists of a section together with its undivided share in common property apportioned to that section in accordance with the quota of the section. Therefore no section can be disposed of without its undivided share in common property, nor may an undivided share in common property be disposed of without its section.

• An exclusive use area is a portion of the common property, which is reserved for the exclusive use by a specific owner of a section.

In terms of the Sectional Titles Act, all owners of the different units are entitled to the use and enjoyment of the entire common property, provided they conduct themselves in a reasonable manner. Nevertheless, developers often wish to grant owners of different units the right to use a certain part of the common property as an exclusive use area for that particular unit only.

The Act specifically provides for such exclusive use areas. However these areas must be indicated on the sectional plan and the developer must impose the exclusive use of such areas as a condition when the sectional title is opened. The purpose for which the exclusive use area may be used must also be disclosed, for example the parking area, and garden area.

A unit owner, in whose favour such an exclusive use area of the common property has been registered, may sell his exclusive right, but only to another owner of a unit in the scheme or a new unit owner.

Transfer of the exclusive use area does not take place by way of a Deed of Transfer but rather by way of a notarial cession. Both the Seller and Purchaser of the unit must sign this document in front of a Notary Public.

• The body corporate: the body corporate comes into being automatically with the first transfer of a unit in a scheme. Thus the body corporate is made up of all owners in a sectional title scheme. The function of the body corporate is to manage, control and administer the scheme.

• Body corporate rules: Every scheme has ‘rules’ that binds the body corporate and owners or occupiers of units. The rules provide for control, management, admin, use and enjoyment of sections and the common property.

Registration of transfer of ownership in sectional title unit

When a sectional title register has been opened and the sectional title plan has been registered, ownership in any unit is transferred by means of a deed of transfer signed by the Registrar. It is not necessary to annex a diagram to any sectional title deed under which a unit is held if reference is made in the deed to the registered sectional title plan.

The various matters which must be attended to before lodgement and registration can take place are exactly the same as those in the case of a conventional transfer.

The deed of transfer must be in the form of Form H in Annexure to the Regulations.

EXAMPLE

A unit in a scheme must be described as follows, for example:
A unit consisting of:
(a) Section No. 11 as shown and more fully described on Sectional Plan No. SS460/94, in the scheme known as VICTORY COURT in respect of the land and buildings or buildings situate at Rondebosch in the Southern Substructure of Cape Town, Cape Division, Province of the Western Cape, of which the floor area, according to the said sectional plan, is 43 (FORTY THREE) 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 ST 46/95 (25) (UNIT).

Every deed of transfer must be prepared by a conveyancer who must sign a preparation certificate.

A Registrar may not register a transfer of a unit unless he is presented with a conveyancer’s certificate confirming that all moneys due to the body corporate have been paid or provision has been made for payment or, if no body corporate has been established, that no moneys are payable. See Annexure R for an example.

A certificate must be obtained from the body corporate of the sectional title scheme that the monies due to it by the registered owner of the unit to be transferred have been paid, valid to date of registration of transfer of such unit in the name of the new owner. This certificate is for the record of the conveyancer only and must not be lodged.

The conveyancer’s certificate must also state that no real right of extension is registered in favour of a developer (section 25, see above) or that there is such a right but that the existence of that right was disclosed in the deed of sale or if not disclosed, that the transferee has agreed in writing not to annul the sale on that ground (see Annexure R).

All transactions entered into on or after the 1st September 2007, must be accompanied by an exemption or a non rated certificate issued by the Municipality confirming that all rates on the unit have been paid up-to-date. The certificate must contain the following information: unit number, scheme name and number, transferor, transferee.

In addition, the Registrar must be supplied with an affidavit from the developer (if the transferor is a developer) that the unit concerned was not occupied by a lessee or if it was, due and proper notice to the lessee was given in terms of section 10 of the Act.

Lodgement of documents for registration

The following documents must be lodged:

- the existing title deed;
- the new deed of transfer;
- the power of attorney;
- the conveyancer’s certificate;
- either an exemption or a non rated certificate issued by the Municipality;
- the transfer duty receipt;
- any consents which may be required.

Joint ownership

It is possible for a unit to be held by two or more persons in joint ownership.
Any person who is a joint owner of a unit under a sectional title deed, may, upon application to the Registrar, obtain a certificate of registered sectional title in respect of his undivided share in the unit.

Forms I and J are prescribed for this purpose.

No transfer of a fraction of the undivided share in the unit and no hypothecation or lease of the whole or any fraction of the undivided share in the unit may be registered in a deeds registry without a certificate of registered sectional title being produced to the Registrar.

**Common property**

The common property is owned by the owners of the sections jointly in undivided shares proportionate to the quotas of their respective sections as specified on the sectional title plan.

A sectional title deed in respect of a section must, in a separate paragraph, describe the undivided share in the common property which is apportioned to that section in accordance with the quota.

A section together with its undivided share in the common property is known as a *unit*.

No section can be disposed of without its undivided share in the common property nor generally may an undivided share in the common property be disposed of without its section.

**Dealings with common property**

The owners may, by unanimous resolution, direct the body corporate on their behalf to alienate the common property or any part of it or to cause a lease to be entered into in respect of the common property or any part of it.

If the holders of bonds over the units in the scheme consent in writing, the Registrar must register the transfer of the common property, in which case it reverts to the land register. The Registrar must make an appropriate endorsement and entry on the title deed and in his records.

**Sectional title mortgage bonds**

Please refer to Annexures S, T and U in Study Unit for examples.

Sectional Mortgage Bonds differ in a number of ways from conventional Mortgage Bonds:

- Other than in the case of conventional Mortgage Bonds a prescribed form is used for Sectional Mortgage Bonds (Form Z).
- The conditions pertaining to the sectional mortgage bond must be annexed to the prescribed form.
- Sectional Mortgage Bonds are executed in the presence of the conveyancer by the mortgagor (or his duly authorized agent). Therefore, only the Sectional Mortgage Bond must be lodged for registration together with the sectional title deed of the unit concerned. Thus a Power of Attorney is not lodged at the deeds office.

Otherwise, the procedures to be followed for the registration of a sectional title mortgage bond are identical to those of a conventional bond.

When cancelling a sectional bond the same format is used for the consent to cancellation as with conventional bonds.
Property Law and Conveyancing Annexures

Edition 3
## PROPERTY LAW AND CONVEYANCING ANNEXURES

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NOTE TO STUDENTS

Please read the relevant annexures as practical examples of the notes (they have been cross-referenced).

**Annexure A and Annexures C to U**
You should not study the substantive content of these annexures, but should familiarise yourself with the use of the forms and content of the annexures.

**Annexure B**
You should study the content of Annexure B.

**Annexure V**
You should study this Annexure as practical examples of the notes.
ANNEXURE A

AGREEMENT FOR SALE OF IMMOVABLE PROPERTY

1. PARTIES

1.1 The parties to this agreement are:

(HEREINAFTER REFERRED TO AS THE PURCHASER)

(HEREINAFTER REFERRED TO AS THE SELLER)

1.2 The parties agree as set out below.

2. INTERPRETATION

2.1 In this agreement, unless inconsistent with or otherwise indicated by the context:

2.1.1 'the Purchaser' is

2.1.2 'the Seller' is

2.1.3 'the property' means certain immovable property being ERF_______
CAPE TOWN more commonly known as ______________________

2.1.3.1 All fixtures and fittings of a permanent nature;
2.1.3.2 All electric light fittings;
2.1.3.3 Stove;

2.1.4 'the transfer date' means as soon as possible.

2.1.5 'signature date' means the date on which this agreement is signed by the last party in time;

2.1.6 'the conveyancers' means ______________________;

2.1.7 'transfer' means registration of transfer of the property into the name of the Purchaser;

2.1.8 any reference to the singular includes the plural and vice versa;
2.1.9 any reference to natural persons includes legal persons and vice versa;

2.1.10 any reference to gender includes other genders.

2.2 The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation.

2.3 Words and expressions defined in any subclause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.

2.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the agreement, notwithstanding that it is only contained in the interpretation clause.

2.5 If any period is referred to in this agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the days shall be the next succeeding business day.

2.6 This agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.

3. PURCHASE AND SALE

3.1 The Seller hereby sells the property to the Purchaser, who hereby purchases the property for the sum of R 00 ( ) which is payable by the Purchaser to the Seller on demand. It is recorded that the purchase price has been paid or secured.

3.2 Pending transfer, the Purchaser shall within 15 (fifteen) days after request therefor, deliver to the conveyancers guarantees issued by a bank or other financial institution reasonably acceptable to the Seller for the payment of the balance of the purchase price in accordance with the provisions of this agreement.

4. MORTGAGE BOND

This agreement is subject to the Purchaser obtaining a mortgage bond of R 00 ( ) from a financial institution, within three (3) weeks from date of signature hereof.
5. WARRANTIES

The property is sold voetstoots and the Seller gives no warranty with regard thereto, whether express or implied. The property is furthermore sold subject to such conditions as may be mentioned or referred to in the Seller’s title deed and/or the relevant diagram or general plan. The Seller shall not be responsible to point out any survey beacons or boundaries of the property to the Purchaser. The Seller shall not be responsible to the Purchaser for any deficiency in the extent of the property that may be found upon the measurement thereof and in like manner, the Purchaser shall be entitled to the benefit of any excess.

6. POSSESSION AND OCCUPATION

Possession and occupation of the property shall be given to and taken by the Purchaser against transfer from which date the Purchaser shall be entitled to every benefit and income arising from the property and from which date the property shall be held by the Purchaser at her risk and, the Purchaser shall be responsible for and shall pay all rates and taxes and other expenses relating to the property. The Purchaser shall on demand refund to the Seller any rates, taxes or other like expenses pre-paid by the Seller beyond such date.

7. TRANSFER

7.1 Transfer of the property into the name of the Purchaser shall be effected by the Conveyancers on transfer date and as soon as possible after the Purchaser shall have complied with her obligations in terms of this agreement.

7.2 The Purchaser shall be responsible and shall pay forthwith on demand the costs of registration of transfer of the property into his/her name including transfer duty and any other necessary changes.

8. BREACH

If the Purchaser/Seller (the defaulting party) commits a breach in any of the provisions of this agreement and fails to remedy such breach within 7 (seven) days of being called upon in writing to do so, then the other party (the aggrieved party) shall be entitled, without prejudice to any other rights which he/she/it may have at law or in terms hereof, to:

8.1 Cancel this agreement and claim such damages and he/she/it may have sustained from the defaulting party;

8.2 Claim immediate performance by the defaulting party of all his/her/its obligations whether or not the due date for performance shall otherwise have arrived.
9. NOTICES AND DOMICILIA

9.1 The parties choose as their *domicilia citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with this agreement at which addresses all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties.

9.2 For the purpose of this agreement the parties’ respective addresses shall be:

9.2.1 The Seller:

9.2.2 The Purchaser:

or at such other address in the Republic of South Africa of which the party concerned may notify the others in writing provided that no street address mentioned in this sub-clause shall be changed to a post office box or *poste restante*.

9.3 Any notice given in terms of this agreement shall be in writing and shall:

9.3.1 If delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

9.3.2 If delivered by prepaid registered post be deemed to have been received by the addressee on the 8th (eighth) day following the date of such posting;

unless the contrary is proved.

9.4 Notwithstanding anything to the contrary contained or implied in this agreement, a written notice or communication actually received by one of the parties from another including by way of facsimile transmission shall be adequate written notice or communication to such party.

10. AGENT

The Purchaser warrants that she was not introduced to the Seller and/or the property by any estate or other agent and no such agent was the effective cause of this sale.
11. CERTIFICATES TO BE PROVIDED BY THE SELLER IN TERMS OF THE OCCUPATIONAL HEALTH AND SAFETY ACT 85 OF 1993, AS AMENDED (the Act)

11.1 ELECTRICAL CERTIFICATES
The Seller shall, prior to possession by the Purchaser, at his/her/it’s cost have the following certificates issued in terms of the above Act:

11.1.1 A certificate of compliance in respect of electrical installations on the property inspected in terms of the Electrical Installations Regulations of 1992;

11.1.2 A certificate of compliance in respect of the Electrical Fence on the property (if applicable) in terms of Regulation 12 of the Electrical Machinery Regulations, 2011 issued by a registered Electric Fencing Installer, registered with the Department of Labour and arrange where necessary for the repair or replacement thereof in order to obtain such Certificates. The Seller furthermore warrants that no alterations or additions to the property and/or electrical fence (if applicable) have been effected to the electrical installations since the issue of the certificate confirming compliance of the said Regulations. The Seller shall deliver the said Certificates of Compliance to the Purchaser prior to possession of the property by the Purchaser.

11.2 GAS CERTIFICATE (delete if not applicable)

11.2.1 A Certificate of Conformity applicable to all gas appliances / systems on the property as prescribed in Regulation 17(3) of the Act.

11.2.2 The Certificate will be issued by an authorised person registered as such with the Liquefield Petroleum Gas Safety Association of Southern African (LPGAS).

All expenses incurred in meeting the criteria for the issue of such certificate, including the certificate itself, shall be borne by the Seller. The Seller furthermore warrants to the Purchaser that no addition or alteration to the gas installations on the property has been effected since the issue of such certificate. Upon the Seller furnishing the Purchaser with the said Certificate of Conformity, the Purchaser shall have no claim whatsoever against the Seller and no further liability in this regard shall rest upon the Seller.

12. BORER BEETLE CERTIFICATE

The Purchaser shall arrange at their expense to have the accessible portions of the property inspected by a Government approved entomologist for infestation by Oxypleuris Nodieri and Hylotrupes Bajules and shall replace with pre-treated timber or treat any timber found to be so infested.

13. WHOLE AGREEMENT

This agreement constitutes the whole agreement between the parties as to the subject matter hereof and no agreements, representations or warranties between the parties regarding the subject matter hereof other than those set out herein are binding on the parties.
14. VARIATION

No addition to or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives.

15. RELAXATION

No latitude, extension of time or other indulgence which may be given or allowed by any party to the other parties in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any party arising from this agreement, and no single or partial exercise of any right by any party under this agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the party’s rights in terms of or arising from this agreement or stop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

16. SIGNATURE

This agreement is signed by the parties on the dates and at the places indicated opposite their respective names.

17. SPECIAL CONDITIONS

Dated at on this day of 2007

AS WITNESSES:

1. ______________________________

2. ______________________________ PURCHASER

Dated at on this day of 2007

AS WITNESSES:

1. ______________________________

2. ______________________________ SELLER
FICA REQUIREMENTS FOR NATURAL PERSONS, COMPANIES AND CLOSE CORPORATIONS

Proof of address
This must be provided by means of either a Certified copy or an Original Utility Bill (not older than 3 months) reflecting current residential address as proof of residence OR if a Company, street address of Company (e.g. Electricity, Municipal, Telkom)

SARS document:
This must be provided by means of any SARS letter or document that reflects the full names of the person/company/close corporation/trust as well as the SARS Income Tax (or VAT, if applicable) reference number

ID
An original or certified copy of Identity Document must be provided and if no ID document an original or certified copy of Passport.

Proof of Marriage
- An original or certified copy of the marriage certificate.
- If married OUT of community of property, the original or a certified copy of antenuptial contract.
- If divorced, the original or certified copy of Divorce Order

S.A. CITIZEN – NATURAL PERSON
1. ID
2. SARS document
3. Proof of Address
4. Proof of marriage

S.A. COMPANY
1. Registration Certificate
2. Notice of Registered Office and Postal Address
3. SARS document
4. Proof of address of Company
5. ID and Proof of Address of all Directors
6. ID and Proof of Address of the person signing on behalf of the Company if he is not a Director.
7. ID and Proof of Address of shareholders with over 25% voting rights.

CLOSE CORPORATION
1. Most recent Founding Statement
2. Most recent Certificate of incorporation (Form CK1)
3. Amending Founding Statement (Form CK2) if applicable
4. Sars Document
5. ID and Proof of Address of all members of the CC
6. ID and Proof of Address of person signing on behalf of the CC if he is not a Member.
ANNEXURE C

ADRIAN GEACH  Professional Land Surveyors

COMPONENTS:
1. The figure ABC\h represents Erf 23269 Parow
   Vide General Plan No. 4510/1997
2. The figure hjDEFG represents Erf 23270 Parow
   Vide General Plan No. 4510/1997

SERVITUDE NOTE:
The lines BC and CD represent the eastern boundary
of a servitude area 4.00m wide vide General Plan No.4510/1997

Scale 1 : 1000
The figure A B C D E F G
represents 4249  Square Metres
of land, being
ERF 23384 PAROW, COMPRISING 1 AND 2 ABOVE
situate in the City of Tygerberg

Administrative District of Cape
Compiled in April 1998
by me.

A.G. Geach (PLS 0869)
Professional Land Surveyor
Province of the Western Cape.

This diagram is annexed to
No. dated i.f.o.
Registrar of Deeds

The original diagrams are
as quoted above

File No.S/584/33
S.R. No. Compiled
Comp. BHSY-13 (H1294)
Gen. Plan No.4510/1997

23384
<table>
<thead>
<tr>
<th>SIDES</th>
<th>ANGLES OF DIRECTION</th>
<th>CO-ORDINATES</th>
<th>S.G. No.</th>
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</thead>
<tbody>
<tr>
<td>Metres</td>
<td></td>
<td>Y System</td>
<td>X</td>
</tr>
</tbody>
</table>

Approved
Surveyor-General

Scale 1:

The figure

Represents

of land, being

situated in

Administrative District of Province of Cape of Good Hope

Surveyed in by me, Land Surveyor

This diagram is annexed to No. dated i.f.o.

Registrar of Deeds

The original diagram is No. annexed to Transfer/Grant No.

File No. S.R. No. Comp.
**ANNEXURE D**

**PERSONAL DETAILS PRINT FOR NAME**

- **TWINE GESINE**
- **ID NUMBER:** 660329
- **BIRTH DATE:** 0
- **MARITAL STATUS:** FOREIGN MARRIAGES
- **MAIDEN NAME:**
- **TYPE OF PERSON:** PRIVATE PERSON

**PERSON HAS NO CONTRACTS/INTERDICTS**

**PROPERTIES OWNED**

<table>
<thead>
<tr>
<th>RD / TOWNSHIP</th>
<th>ERF/FARM</th>
<th>PATN</th>
<th>TITLE DEED</th>
<th>MICROFILM REF</th>
<th>SHARE</th>
<th>O/P/A</th>
<th>PURCH DATE</th>
<th>AMOUNT/REASON</th>
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<td>22222</td>
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<td>T124519/1997</td>
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<td>R91 500</td>
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<td></td>
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* O/P/A = O - MULTIPLE OWNER  P - MULTIPLE PROPERTY  A - MULTIPLE OWNER AND PROPERTY

**PROPERTY DETAILS PRINT FOR PORTION**

- **ERF NO:** 22222
- **TOWNSHIP:** MILNERTON
- **REG DIV:** NOT AVAILABLE

**PROVINCE:** WESTERN CAPE

**PREV DESCRIPTION**

- PTN OF 21370-GP2222D/97

**DIAGRAM DEED NO:** T124519/1997

**EXTENT:** 605.50M

**CLEARANCE:** MILNERTON MAN

**CONVERTED EXTENT:** 605.50M

**NO INTERDICTS**

**NO DOCUMENTS**

**OWNER DETAILS**

- **FULL NAME & SHARE:** TWINE GESINE
- **PURCH DATE:** 1997/09/17
- **AMOUNT/REASON:** R89 500
- **O/P/A:** 660329
- **TITLE DEED:** T124519/1997
- **MMOD:** 1224
- **MICROFILM REF:** 1998 0052 0571

* O/P/A = O - MULTIPLE OWNER  P - MULTIPLE PROPERTY  A - MULTIPLE OWNER AND PROPERTY

*** END OF REPORT ***
### ANNEXURE E

**COULTERS VAN GEND & KOTZE**

**TELEPHONE: 01-5012**

**EXECUTION/UITVOERING**

<table>
<thead>
<tr>
<th>Ondersector / Examiners</th>
<th>Kran / Rooms</th>
<th>Skoteling / Linking</th>
<th>Relief / Verenig</th>
<th>Proper / Post</th>
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<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
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<table>
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<th>Af. R.S. de Villies</th>
<th>1.49412196</th>
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</table>

<table>
<thead>
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<th>Skoteling / Linking</th>
<th>Titelakte / Title deeds within</th>
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<td>T999/39</td>
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### GELYKTYDIGES / SIMILAR

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<th>Kode / Code</th>
<th>Name van Party / Names of Parties</th>
<th>Nooan van Firma / Name of Firm</th>
<th>Firma / Firm No.</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>T</td>
<td>A.F. de Villies / Burgess</td>
<td>Coulter</td>
<td>33</td>
</tr>
<tr>
<td>2</td>
<td>BC</td>
<td>A.F. de Villies / Standard Bank</td>
<td>Rusbirk</td>
<td>53</td>
</tr>
<tr>
<td>3</td>
<td>BC</td>
<td>A.F. de Villies / Standard Bank</td>
<td>Rusbirk</td>
<td>53</td>
</tr>
<tr>
<td>4</td>
<td>B</td>
<td>Burgess / Standard Bank</td>
<td>Rusbirk</td>
<td>53</td>
</tr>
</tbody>
</table>

| 5        |             |                                  |                                |                  |
| 6        |             |                                  |                                |                  |
| 7        |             |                                  |                                |                  |
| 8        |             |                                  |                                |                  |
| 9        |             |                                  |                                |                  |
| 10       |             |                                  |                                |                  |
| 11       |             |                                  |                                |                  |
| 12       |             |                                  |                                |                  |
| 13       |             |                                  |                                |                  |
| 14       |             |                                  |                                |                  |
ANNEXURE F

PERSONAL AFFIDAVIT

I, the undersigned,

DO HEREBY MAKE OATH AND SAY THAT:

1. My full names and Identity Number as stated above are correct.

2. I am in possession of an Identity Document issued by the responsible Government Authority in accordance with Regulation 18(1) of the Deeds Registry Act of 1937, in the Republic of South Africa and the information reflected therein is correct.

3. My marital status is: Married in community of property

   I was married in South Africa on ______________________________ .

4. My spouse’s full names are ______________________________ .

I certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit which was signed and affirmed/sworn to before me at on ______________________________ , under compliance with the regulations contained in Government Notice R1258 dated 21 July 1972, (as amended).

COMMISSIONER OF OATHS

FULL NAMES:
STATUS:
STREET ADDRESS:
PERSONAL AFFIDAVIT

I, the undersigned,

DO HEREBY MAKE OATH AND SAY THAT:

1. My full names and date of birth as stated above are correct.

2. No identity documents has been issued to me by the responsible Government Authority in accordance with Regulation 18(1) of the Deeds Registry Act of 1937, in the Republic of South Africa.

3. My marital status is: Married out of community of property.

I certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit which was signed and affirmed/sworn to before me at on , under compliance with the regulations contained in Government Notice R1258 dated 21 July 1972, (as amended).

COMMISSIONER OF OATHS

FULL NAMES:
STATUS:
STREET ADDRESS:
AFFIDAVIT

I, the undersigned,

DO HEREBY DECLARE UNDER OATH THAT at the date hereof I am not insolvent nor has my estate ever been provisionally or finally sequestrated and that any record or interdict in any Deeds Registry or any Public Office, of the sequestration of the estate of a person bearing my name or a name similar to mine, does not apply to me.

_________________________________________

I certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit which was signed and affirmed/sworn to before me at on , under compliance with the regulations contained in Government Notice R1258 dated 21 July 1972, (as amended).

_________________________________________

COMMISSIONER OF OATHS

FULL NAMES:
STATUS:
STREET ADDRESS:
A F F I D A V I T  B Y  P U R C H A S E R

Information required by Transfer Attorney to comply with Financial Intelligence Centre Act, No. 38 of 2001

I, the undersigned,

IDENTITY NUMBER

DO HEREBY DECLARE UNDER OATH:

1. THAT my names and identity number are correct as reflected above;

2. THAT my residential address is the following:

3. THAT my income tax registration number is:

4. THAT the source of income/funds to finance the property purchased by myself is the following:

I certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit which was signed and affirmed/sworn to before me at on , under compliance with the regulations contained in Government Notice R1258 dated 21 July 1972, (as amended).

COMMISSIONER OF OATHS

FULL NAMES:
STATUS:
STREET ADDRESS:
### ANNEXURE G

**ISIDIKO SASEKAPA**  
**CITY OF CAPE TOWN**  
**STAD KAAPSTAD**

<table>
<thead>
<tr>
<th>Issued By:</th>
<th>Office:</th>
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</thead>
<tbody>
<tr>
<td>Tel Nr.:</td>
<td>Fax Nr.:</td>
</tr>
<tr>
<td>Certificate Nr.:</td>
<td>Date:</td>
</tr>
</tbody>
</table>

**CLEARANCE CERTIFICATE FOR MUNICIPAL SERVICES, SURCHARGES ON FEES, PROPERTY RATES, OTHER MUNICIPAL TAXES, LEVIES, DUTIES ON TRANSFER OF PROPERTY**

Authority is hereby granted in terms of section 116 of the Local Government Municipal Systems Act, 2009 (Act 2009) for the registration of the transfer of the property/ies mentioned herein.

<table>
<thead>
<tr>
<th>Valid Until:</th>
<th>Conveyancer Ref Nr:</th>
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</table>

<table>
<thead>
<tr>
<th>Transfer from:</th>
<th>Id. Nr:</th>
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</thead>
</table>

<table>
<thead>
<tr>
<th>Transfer to:</th>
<th>Id. Nr:</th>
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</thead>
</table>

<table>
<thead>
<tr>
<th>Erf/Farm portion:</th>
<th>Township</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Area:</th>
<th>Share portion:</th>
</tr>
</thead>
</table>

---

**STAD KAAPSTAD**  
**03 MAR 2005**  
**CITY OF CAPE TOWN**

---

for: Executive Director: Finance

---
POWER OF ATTORNEY TO PASS TRANSFER

I, the undersigned

TOM ANTHONY NEWMAN WINDOWS
Born on 12 January 1975
Married out of community of property

do hereby nominate and appoint KATE KEATS

with power of substitution to be my true and lawful Attorney and Agent in my name, place and stead
to appear at the Office of the Registrar of Deeds in Cape Town or any other competent official in the
Republic of South Africa and then and there as my act and deed to pass transfer to:

PETE SKEATE
Identity Number 820802 5196 081
Unmarried

the property described as:

ERF 64623 CAPE TOWN AT KENILWORTH
SITUATED IN THE CITY OF CAPE TOWN,
CAPE DIVISION,
PROVINCE OF THE WESTERN CAPE;
IN EXTENT: 289 (TWO HUNDRED AND EIGHTY NINE) SQUARE METRES
HELD BY Deed of Transfer No. T30808/2003

the said property having been sold by me on 11 January 2005, to the said transferee/s for the sum of
R 850 000,00 (Eight Hundred and Fifty Thousand Rand)
and further cede and transfer the said property in full and free property to the said Transferee; to
renounce all right, title and interest which the Transferor heretofore had in and to the said property,
and generally, for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be
requisite, as fully and effectually, to all intents and purposes, as the Transferor might or could do if
personally present and acting therein; hereby ratifying, allowing and confirming all and whatsoever
the said Agent/s shall lawfully do or cause to be done in the premises by virtue of these presents.

Signed at Rondebosch on 28 January 2005

in the presence of the undersigned witnesses.

AS WITNESSES:

1. ___________________________________________ __________________________
   ___________________________________________ TOM ANTHONY NEWMAN WINDOWS

2. ___________________________________________
BE IT HEREBY MADE KNOWN THAT

KATE KEATS

appeared before me, REGISTRAR OF DEEDS, at CAPE TOWN, the, the said appearer, being duly thereto authorised thereto by a Power of Attorney which said Power of Attorney was signed at Rondebosch on 28 January 2005 granted to her by:

TOM ANTHONY NEWMAN WINDOWS
Born on 12 January 1975
Married out of community of property

And the appearer declared that her said principal had, on 11 January 2005, truly and legally sold by Private Treaty, and that she, the said Appearer, in her capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

PETE SKEATE
Identity Number 820802 5196 08 1
Unmarried

His Heirs, Executors, Administrators or Assigns, in full and free property

REMAINDER ERF 64623 CAPE TOWN AT KENILWORTH,
SITUATED IN THE CITY OF CAPE TOWN,
CAPE DIVISION,
PROVINCE OF THE WESTERN CAPE

IN EXTENT 289 (TWO HUNDRED AND EIGHTY NINE) SQUARE METRES
FIRST TRANSFERRED by Deed of Transfer No. T651 dated 25th February 1891 with Diagram No. 119/1891 relating thereto and now held by Deed of Transfer No. T30808/2003.

A. **SUBJECT** to the conditions referred to in Deed of Transfer No. T2034/10902.

B. **SUBJECT FURTHER** to the following condition reference whereto was on 7th October, 1975 endorsed on Deed of Transfer No. T9478/1974, namely:-

'By their respective Deeds of Transfer, portions of the within property have been transferred subject and entitled to certain conditions relating to common walls, roofs, pipes, gutters, wiring, etc. in favour of and over the remainder thereof.'

WHEREFORE the said Appearer, renouncing all right and title which the said

**TOM ANTHONY NEWMAN WINDOWS, Married as aforesaid**

heretofore had to the premises, did in consequence also acknowledge him to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

**PETE SKEATE, Unmarried**

his Heirs, Executors, Administrators or Assigns, now is and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sume of R850 000,00 (Eight Hundred and Fifty Thousand Rand).

IN WITNESS WHEREOF, I the said Registrar, together with the Appearer, 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 Cape Town on 200

q.q.

In my presence,

______________________________

**REGISTRAR OF DEEDS**
## ANNEXURE J

**SARS**

**TRANSFER DUTY**

**Declaration by seller - Transfer Duty Act, 1949**

### Details of seller(s)/transferor(s)

<table>
<thead>
<tr>
<th>Full name of seller/transferor (1)</th>
<th>PETER PIPER</th>
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<tbody>
<tr>
<td>Identity/Trust/CC/Company number</td>
<td>281123 0012 08 1</td>
</tr>
<tr>
<td>If you are not registered for Income Tax, state your annual income from all sources</td>
<td>R9,00</td>
</tr>
<tr>
<td>If you are a VAT vendor, state your VAT registration number</td>
<td></td>
</tr>
<tr>
<td>If you are a non-resident, state country of residence and passport number</td>
<td></td>
</tr>
<tr>
<td>Full name of seller/transferor (2)</td>
<td>N/A</td>
</tr>
<tr>
<td>Identity/Trust/CC/Company number</td>
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</tr>
<tr>
<td>If you are not registered for Income Tax, state your annual income from all sources</td>
<td>N/A</td>
</tr>
<tr>
<td>If you are a VAT vendor, state your VAT registration number</td>
<td>N/A</td>
</tr>
<tr>
<td>If you are a non-resident, state country of residence and passport number</td>
<td>N/A</td>
</tr>
<tr>
<td>Date property acquired by seller(s)</td>
<td>18 June 2004</td>
</tr>
<tr>
<td>Original purchase price</td>
<td>R335 000.00</td>
</tr>
</tbody>
</table>

### Details of estate agency

| Name of estate agency |  |
| Commission payable to agency (incl VAT) | R0.00 |
| VAT registration number of estate agency | N/A |

### Details of sale transaction

| Date of transaction | 30 October 2006 |
| Selling price | R811 000.00 |
| Any other consideration payable | R N/A |
| Total | R811 000.00 |

### Is the transaction subject to CGT? | YES | NO |
| Description of property (as per Deeds Registry) | ERF 12345 CAPE TOWN, SITUATED IN THE CITY OF CAPE TOWN, CAPE DIVISION, PROVINCE OF THE WESTERN CAPE; IN EXTENT 200 (TWO HUNDRED) SQUARE METRES |
| Occupation of property | Occupied as your primary residence | YES | NO |
| Used for business purposes | YES | NO |
| Other - State use | YES | NO |

### Declaration by seller(s)/transferor(s)

The transferor(s) and transferor(s) are connected persons as defined in the Value-Added Tax Act, 1991. This declaration is made by me/us as `seller(s)/representative(s)` of the seller(s).

We certify that the information furnished in this declaration is true and correct.

Signature of seller(1) |  |
Signature of seller(2) |  |

### Certificate by conveyancer or attorney

I certify that these are true copies of the declarations held by me, which declarations will be retained by me for 5 years from the date of registration of transfer.

Name of Conveyancing firm | Smith’s Inc |
Conveyancer’s/Attorneys reference no | P380 |
Conveyancers Reference no | Mr SMITH |
Date |  |

GhostConvey 9.4.0.10
Details of purchaser(s)/transferee(s)

JAMES LITTLE

Full name of purchaser/transferee (1)

761101 5947 08 2

Identity/Trust/CC/Company number

Income Tax reference number

R0,00

If you are not registered for Income Tax, state your annual income from all sources

Telephone number during off hours

MARY LITTLE

Full name of purchaser/transferee (2)

810531 0083 08 6

Identity/Trust/CC/Company number

Income Tax reference number

R0,00

If you are not registered for Income Tax, state your annual income from all sources

Telephone number during off hours

Details of purchase transaction

30 October 2006

Date of acquisition

R611 000,00

Consideration

R611 000,00

Total consideration

ERF 12345 CAPE TOWN, SITUATED IN THE CITY OF CAPE TOWN, CAPE DIVISION, PROVINCE OF THE WESTERN CAPE; IN EXTENT 200 (TWO HUNDRED) SQUARE METRES

Description of property as per Deeds Registry

Physical address

Property is:

Improved

Unimproved

Built by:

Private Treaty

Public Auction

Nature of property:

Primary residence

Other residential property

Commercial building

Industrial building

For what purpose will the property be used?

PRIMARY RESIDENCE

Are the provisions of section 5(4) of the Income Tax Act, 1952, applicable? (i.e. bought from a non-resident) YES NO

If you are a VAT vendor and will be claiming input tax in respect of this acquisition, supply your VAT number

Calculation of duty and interest payable

R611 000,00

Transfer Duty payable on

% on

R500 000,00

R111 000,00

R550,00

Sub total

R5 550,00

SARS reference 9509/111814/3

Penalty/interest (number of months x 10% p.a.)

R0,00

Conveyance/Attorneys file reference

B360

Total payable

R5 550,00

Declarant by purchaser(s)/transferee(s)

Signature of purchaser(1)

Date

Signature of purchaser(2)

Date

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Details of seller(s)/transferor(s)

Full name of seller/transferor (1)  
PETER PIPER

Identification/Trust/CC/Company number  
281123 0012 08 1

Full name of seller/transferor (2)  

Identification/Trust/CC/Company number  

Details of purchaser(s)/transferee(s)

Full name of purchaser/transferee (1)  
JAMES LITTLE

Identification/Trust/CC/Company number  
761091 5047 08 2

Full name of purchaser/transferee (2)  
MARY LITTLE

Identification/Trust/CC/Company number  
610531 0006 08 5

Details of purchase transaction

Transfer Duty payable on  
R611 000,00

Date of acquisition  
30 October 2006

Bought by:  
Private Treaty ✓  Public Auction

Consideration  
R611 000,00

Any other consideration payable  

Total consideration  
R611 000,00

SARS reference  
68026/111/1413

Conveyancer's/Attorney's file reference  
B388

Description of property  
ERF 12345 CAPE TOWN AT,  
SITUATED IN THE CITY OF CAPE TOWN,  
CAPE DIVISION,  
PROVINCE OF THE WESTERN CAPE;  
IN EXTENT 200 (TWO HUNDRED) SQUARE METRES

Declaration by Conveyancer/Attorney  
CHARLES SMITH (SMITH'S) inc  

(full name) hereby certify that this is a true copy of the transfer duty receipt/exemption certificate, drawn from the SARS website (e-filing only).

Signature  

Date  

RECEIPT/EXEMPTION
POWER OF ATTORNEY

I/We the undersigned

JANE PIETERS
duly authorized hereto by a resolution of the members of
FYNBOSLAND 20 CC
Registration Number 2001/012665/23

being fully acquainted with the contents of the Bond hereinafter set out and especially with the legal force of the benefits of the legal exceptions mentioned and renounced therein which are fully understood by me/us, hereby nominate and appoint KATE KEATS

with power of substitution, to be my/our Attorney and Agent to appear before the REGISTRAR OF DEEDS at CAPE TOWN or any other competent official in the Republic of South Africa, and then and there is my/our act and deed to declare that whereas ABC Bank Limited (Registration Number 1999/012345/06) has agreed to lend to me/us the sum(s) specified in the said bond and to sign and execute the said Bond and also to cede to ABC Bank Limited (Registration Number 1999/012345/06) all assurance policies therein referred to; to make and authenticate all such alterations, additions and/or deletions in and to the said Bond herein after set out as may be necessary for the purpose of registration thereof; to receive from ABC Bank Limited (Registration Number 1999/012345/06) the sum to be advanced to me/us under the said Bond; to issue or arrange the issue of guaranties and/or letters of undertaking up to the full amount of the Bond; AND GENERALLY to do whatsoever may be necessary to make the said Bond as valid and effectual as I/we could do if personally present, herebyratifying all and whatsoever the said Attorney shall lawfully do or cause to be done by virtue of these presents.

THUS DONE AND PASSED at RONDEBOSCH
on 5 August 2004
AS WITNESSES :

1. ____________________________________________
   JANE PIETERS on behalf of FYNBOSLAND 20
   CC

2. ____________________________________________
ANNEXURE L

Prepared by me

CONVEYANCER
KATE KEATS

ABC BANK LIMITED
MORTGAGE BOND

BE IT HEREBY MADE KNOWN:

THAT KATE KEATS

appeared before me, REGISTRAR OF DEEDS, at Cape Town, he, the said App earer, being duly thereto authorised by a Special Power of Attorney executed at Rondebosch on 5 August 2004, and granted to him by -

FYNBOSLAND 20 CC
Registration Number 2001/012665/23

('the Mortgagor') which Power of Attorney was exhibited to me on this day.
1  
**CAUSE OF INDEBTEDNESS**

The Appearer declared that the Mortgagor has become indebted to, and/or will from time to time become indebted to,

**ABC BANK LIMITED**  
Reg No 1999/012345/06

its successors or assigns ('the Bank'), which indebtedness arose and/or will arise from any cause whatsoever.

2  
**ACKNOWLEDGEMENT OF DEBT**

The Appearer acknowledged and declared his principal, the Mortgagor, to be truly and lawfully held and firmly bound unto and in favour of the Bank and the security conferred by this bond, to be in the sum of **R600 000,00 (Six Hundred Thousand Rand)** or any lesser amount that may from time to time be owing ('the capital amount'), arising from any cause whatsoever, together with interest on the capital amount.

3  
**ADDITIONAL AMOUNT**

The Appearer further declared the Mortgagor to be truly and lawfully held and firmly bound unto and in favour of the Bank in the additional amount of **R120 000,00 (One Hundred and Twenty Thousand Rand)** ('the additional amount') in respect of the following costs and similar causes, viz service fees, discount, commission, costs of legal proceedings (plus Value Added Tax thereon) and stamps in connection with the issue of any notices and demands in any legal process for the recovery of any amount secured under this bond, all moneys disbursed by the Bank in respect of stand licences, Government and Municipal rates and taxes and other charges in respect of the property mortgaged under this bond, insurance premiums and costs of repairs and maintenance, and, in general, all costs of maintaining and realising the property mortgaged under this bond.

4  
**CONTINUING COVERING BOND**

This bond shall remain in force as continuing covering security for the capital amount, the interest thereon and the additional amount, notwithstanding any intermediate settlement, and, notwithstanding any intermediate settlement, this bond shall be and remain of full force, virtue and effect as a continuing security and covering bond for each and every sum in which the Mortgagor may now or hereafter become indebted to the Bank from any cause whatsoever to the amount of the capital amount, interest thereon and the additional amount.
6JOINT AND SEVERAL LIABILITY

Should there be more than one Mortgagor under this bond then –
6.1 the liability of each Mortgagor shall be joint and several, unless otherwise agreed in writing;
6.2 all references in this bond to 'the Mortgagor' shall be construed as references to all of the
Mortgagors, jointly and severally, unless the context otherwise required.

7 REPAYMENT

The Mortgagor shall repay all amounts owing by him to the Bank and which are secured under this
bond in accordance with the provisions of such written agreement or agreements as have been
concluded, or which may be concluded from time to time hereafter, between the Mortgagor and the
Bank.

8 INTEREST

Interest on all amounts owing by the Mortgagor to the Bank and secured under this bond shall be
calculated in the manner or manners and at the rate or rates determined or to be determined in
terms of any written agreement or agreements concluded or to be concluded between the Bank and
the Mortgagor from time to time and failing any such agreement shall be calculated in the manner or
manners currently necessary and at the rate or rates currently charged by the Bank in respect of the
relevant transaction, provided that such interest rate or rates shall not exceed the legal maximum
rate.

9 DEFAULT

Unless otherwise agreed in writing, if the Mortgagor fails to observe or perform any of the terms or
conditions of any written agreement or agreements between the Mortgagor and the Bank in respect
of any amounts which are secured under this bond or if the Mortgagor fails to observe or perform any
of the terms and conditions of this bond or of the Standard Mortgage Conditions hereinafter referred
to or if the Mortgagor upon demand by the Bank fails to pay to the Bank any amount which is legally
claimable by the Bank or if the Mortgagor fails to discharge any obligation or liability to the Bank on
the due date thereof, then all the amounts which are secured under this bond shall, at the option of
the Bank and without the Bank being required to give notice to the Mortgagor, immediately become
payable in full, notwithstanding the exercise by the Bank of any other rights, and the Bank shall be
entitled thereupon to institute proceedings for the recovery of all such amounts and for a court order
declaring the mortgaged property executable.
10 PROOF OF INDEBTEDNESS

10.1 The amounts at any time owing by the Mortgagor to the Bank which are secured under this bond (including any interest and the rate or rates at which and the period or periods for which interest is calculable) and the fact that such indebtedness is due and payable may be determined and proved by a certificate signed by any manager of the Bank, whose appointment and authority to sign such certificate need not be proved.

10.2 Such certificate shall be accepted as proof of the facts stated therein, unless the Mortgagor is able to prove the facts incorrect.

11 DOMICILIJUM CITANDI ET EXECUTANDI

The Mortgagor chooses for the service of all notices, communications or legal processes (domicilium citandi et executandi) for all purposes under this bond, as his address, the physical address of the mortgaged property or, should there be more than one mortgaged property, the physical address of any one of the mortgaged properties.

12 JURISDICTION

12.1 The Mortgagor consents in terms of section 45 of the Magistrates' Courts Act, No 32 of 1944, as amended, to the Bank instituting any legal proceedings for enforcing any of its rights under this bond in the Magistrate's Court of any district having jurisdiction in respect of the Mortgagor by virtue of section 28(1) of the aforesaid Act.

12.2 Notwithstanding the Mortgagor's consent to the jurisdiction of the Magistrate's Court aforementioned, the Bank shall have the right to institute legal proceedings against the Mortgagor in any other competent court having jurisdiction in the matter.

13 LEGAL COSTS

The Mortgagor shall be liable to the Bank for the payment of all legal costs to which the Bank may become lawfully entitled, including tracing costs and collection commission (plus Value Added Tax thereon), on the scale as between attorney and client.
15
PRESUMPTION OF DUE COMPLIANCE

In any court action by the Bank against the Mortgagor for the recovery of any amount which is secured under this bond:

15.1 it shall be presumed that the Bank has duly complied with all the terms and conditions of the relevant agreements referred to in 6 between it and the Mortgagor and with all the terms and conditions of this bond and with all the terms and conditions of the Standard Mortgage Conditions hereinafter referred to; and

15.2 it shall not be necessary for the Bank to produce proof of such compliance, unless the Mortgagor has placed the presumption of due compliance in dispute.

16
STANDARD MORTGAGE CONDITIONS

16.1 The Standard Mortgage Conditions of the Bank which have been filed in the Deeds Registry in which this bond is registered under reference BC8/2005 are applicable to and form part of this bond except insofar as any written agreement between the Mortgagor and the Bank may provide otherwise.

16.2 In the event of a conflict between the provisions of this bond and the provisions of the Standard Mortgage Conditions, the provisions of this bond shall prevail.

16.3 By his signature to the Power of Attorney authorising the registration of this bond the Mortgagor acknowledges that he has been provided with a copy of the Standard Mortgage Conditions referred to in 14.1.

17
MORTGAGED PROPERTY

As security for the due and prompt payment of the capital amount or any portion thereof, interest due thereon and the additional amount or any portion thereof which may be owing or payable at any time to the Bank, the Appearer on behalf of the Mortgagor hereby declares to bind specially as a FIRST MORTGAGE, the following immovable property:

ERF 9876 CAPE TOWN,
IN THE CITY OF CAPE TOWN,
CAPE DIVISION,
PROVINCE OF THE WESTERN CAPE;

IN EXTENT 630 (SIX HUNDRED AND THIRTY) SQUARE METRES

HELD BY DEED OF TRANSFER NO. T
SUBJECT TO THE CONDITIONS THEREIN CONTAINED.
IN WITNESS WHEREOF I, the said REGISTRAR, together with the Appearer qq 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 Cape Town on 200

In my presence,

REGISTRAR OF DEEDS
ANNEXURE M

Prepared by me

______________________________
CONVEYANCER
KATE KEATS

C O N S E N T

I, the undersigned, as in my capacity
of and duly authorised
by a Resolution of

ABC BANK LIMITED
Reg. No. 1999/012345/06

dated , the legal holder of the under mentioned bond, namely

NUMBER B3344/1999

PASSED BY MARK PETERS
Identity Number 680405 5230 082
Unmarried

IN THE SUM OF R5 000,00 (Five Thousand Rand) plus R1 000,00 (One Thousand Rand)
costs clause

IN FAVOUR OF ABC BANK LIMITED
Reg. No. 1999/012345/06

DO HEREBY consent to the cancellation of the aforementioned Mortgage Bond.

DATED at this day of 2007

WITNESSES:

1. .................................................... ....................................................

2. .................................................... ....................................................
ANNEXURE N

Prepared by me

CONVEYANCER
TRACEY ANNE SMITH

APPLICATION FOR A CERTIFIED COPY IN TERMS OF REGULATION 68(1)
OF THE DEEDS REGISTRIES ACT NO. 47 OF 1937

I, the undersigned,

PETRUS WILLEM TROETELDIER
Identity Number 560793 5346 99 0
Unmarried

do hereby declare under oath that:

(a) I am the registered owner of
LOT 23561 RONDEBOSCH,
situate in the Southern Substructure
Cape Division Province of the Western Cape.
HELD under Deed of Transfer T 2345/92

(b) The deed of transfer T 2345/92 in my favour has been lost or destroyed and has not been in
my possession for some years.

(c) The last time I recall having seen the deed is in 1992 shortly after having received it from the
transferring attorneys.

(d) In 1994 my house was broken into and among other things stolen was a cash box containing
personal papers. It is likely that the deed was in that box.

(e) Despite a thorough search I cannot trace the deed of transfer.

(f) The said deed has not been pledged and is not being retained by anyone as security for a
debt or otherwise, but that it has actually been lost and cannot be found

P.W. TROETELDIER

(Include attestation clause)
AFFIDAVIT AND CONSENT

I, the undersigned
KOOS KOEKEMOER

in my capacity as home loans manager of First National Bank duly authorised thereto by a resolution of the board of directors dated at Cape Town on 22 November 1996,
do hereby declare under oath:

(a) That the said bank is the legal holder of Mortgage Bond Bl111/92 passed by Petrus Willem Troeteldier, identity number 560723 5346 99 0, unmarried, and registered over –

   LOT 23561 RONDEBOSCH, situate in the Southern Substructure, Cape Division, Province of the Western Cape;

   MEASURING 1 000 (one thousand) square metres;

   HELD under Deed of Transfer T2345/92 by the said Petrus Willem Troeteldier.

(b) That the said deed of transfer is not in the possession of the Bank and that they never received it from the attorneys passing transfer.

(c) That I hereby consent to the issue of a certified copy of the said deed under the provisions of Regulation 68(1) of the Deeds Registries Act No. 47 of 1937.

On behalf of First National Bank

(Attestation clause to be inserted to be completed by commissioner of oaths)
AFFIDAVIT AND APPLICATION IN TERMS OF SECTION 4(1)(b) OF THE DEEDS REGISTRIES ACT, 1937 (NO. 47 of 1937)

I, the undersigned

JOHANES DLAMINI
Identity Number: 551212 5464 55 7
Married out of community of property

do hereby make oath and state:

1. That my correct names and identity number are as set out above.
2. That my first name is incorrectly spelt as JOHANNES in Deed of Transfer T 5123/96.
3. That the error as it appears in the deed occurred when the deed was drafted.
4. That there are no other deeds or documents registered in the deeds registry Cape Town which require amendment.
5. That the required amendment will not have the affect of transferring any rights.
6. That I hereby apply to the Registrar of Deeds at Cape Town, in terms of the abovementioned section, that the error be rectified.

JOHANES DLAMINI

(The attestation clause to be inserted to be completed by the commissioner of oaths)
CERTIFICATE OF REGISTERED SECTIONAL TITLE

issued in terms of Section 12(1)(d) of
Sectional Titles Act 1986

I, Registrar of Deeds at Cape Town, hereby certify that

is/are the registered owner(s) of a Unit consisting of:
(a) Section No. as shown and more fully described on Sectional Plan No. in the scheme known as in respect of the land and building or buildings situate at Cape Town, in the area of the Transitional Metropolitan Substructure of Cape Town, of which section the floor area, according to the said Sectional Plan is 70 (Seventy) 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.

The unit is subject to or shall benefit by:

(i) the servitudes, other real rights and conditions, if any, as contained in the Schedule of conditions referred to in Section 11(3)(b) and the servitudes referred to in Section 28 of the Sectional Titles Act, 1986; and

(ii) any alteration to the building or buildings or to a section or to the common property shown on the said Sectional Plan

SIGNED at on

...........................................................
REGISTRAR OF DEEDS
CONVEYANCER’S CERTIFICATE UNDER SECTION 15B(3) OF THE SECTIONAL TITLES ACT, 1986 AS AMENDED

I, , the undersigned Conveyancer, hereby certify in respect of a Unit transferred from to comprising of:

I. (a) Section No. as shown and more fully described on Sectional Plan No. in the scheme known as in respect of the land and building or buildings situate at Rondebosch, in the Transitional Metropolitan Substructure of Cape Town, of which section the floor area, according to the said Sectional Plan is 170 (One Hundred and Seventy) 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 Deed of Transfer No.

II. (a) Section No. as shown and more fully described on Sectional Plan No. in the scheme known as in respect of the land and building or buildings situate at Rondebosch, in the transitional Metropolitan Substructure of Cape Town, of which section the floor area, according to the said Sectional Plan is 20 (Twenty) square metre 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 Deed or Transfer No.

1. 1.1 Provision has been made for the payment of all moneys which are due to the Body Corporate by the Transferor/s of the unit.

1.2 That Section 15(4)(b) does not apply as no Body Corporate in respect of the aforesaid building has yet been established.

2. Provision has not been made for the separate rating of units.
3. That, except in so far as the transfer gives effect to an interdict, attachment, caveat or other such notice, accordingly to a sworn declaration furnished by the Transferor, there is no such interdict, attachments, caveat or notice applicable and that, unless the transfer is from an insolvent estate, the transferor is not insolvent.

4. 4.1 That no real right of extension of the scheme as contemplated in Section 25 of the Sectional Titles Act 1986 is registered in favour of the Body Corporate or Developer.

4.2 That a real right of extension of the scheme as contemplated in Section 25 of the Sectional Titles Act 1986 is registered and although it had not been disclosed in the Deed of Alienation the Transferee/s on conclusion of the Deed of Alienation has/have in writing exercised his/their option in terms of Section 5(15) of the said Act not to cancel the alienation on this ground.

4.3 That a real right of extension of the scheme as contemplated in Section 25 of the Sectional Titles Act 1986 is registered and had been disclosed in the Deed of Alienation as contemplated in Section 25(14) of the said Act.

5. That no tie conditions are being contravened by this transaction.

6. The Unit to be transferred is not a community asset as contemplated in Section 15(2)(a) of the Matrimonial Property Act No. 88 of 1984 and the consent of the spouse therein contemplated is not required.

7. That the provisions of Section 27(1)(b) of the Sectional Title Act and more particularly the Proviso thereto does not apply to this transfer.

SIGNED at this day of .

_______________________
CONVEYANCER

Name in block letters:
Address where Conveyancer practises:
ANNEXURE S

POWER OF ATTORNEY TO EXECUTE A SECTIONAL MORTGAGE BOND BEFORE A CONVEYANCER

I/We, the undersigned,

MARK PETERS
IDENTITY NUMBER: 680504 5230 082
Unmarried

do hereby declare that I/we am/are fully acquainted with the contents of the attached sectional mortgage bond for the sum of R8 000,00 (Eight Thousand Rand) to be passed by me/us in favour of

ABC BANK LIMITED
Reg. No. 1999/012345/06

over SECTION 12 MARVEL COURT

and especially with the legal force and effect of all benefits and exceptions mentioned and renounced therein, and I/we hereby irrevocably and in rem suam authorise and empower

CATHERINE MOSES

to appear before a conveyancer and on my/our behalf to execute the abovementioned sectional mortgage bond and to authorise on my/our behalf the said or any other conveyancer to register the abovementioned sectional mortgage bond against the said property, and if necessary to amend the said sectional mortgage bond as may be necessary for purposes of registration, to sign and execute all necessary deeds and documents and generally to do whatsoever shall be necessary or requisite in order to make the said sectional mortgage bond valid or effectual in every respect, and to fulfil the purposes of this authority as fully and effectually to all intents and purposes whatsoever as I/we could do if personally present and acting herein, hereby ratifying allowing and confirming and promising and agreeing to ratify, allow and confirm all and whatsoever my/our said Attorney and Agent or any one of them shall lawfully do or cause to be done by virtue of these presents.

THUS DONE AND GIVEN at ________________
on

in the presence of the undersigned witnesses.

AS WITNESSES:

1. ____________________________

2. ____________________________
POWER OF ATTORNEY IN FAVOUR OF CONVEYANCER 
TO REGISTER SECTIONAL MORTGAGE BOND

I/We, the undersigned,

MARK PETERS
IDENTITY NUMBER: 680504 5230 082
Unmarried

herein represented by CATHERINE MOSES
acting under and by virtue of a power of attorney dated
at on

do hereby declare that I/we am/are fully acquainted with the contents of the attached sectional mortgage bond for the sum of R8 000,00 (Eight Thousand Rand) to be passed by me/us in favour of

ABC BANK LIMITED
Reg. No. 1999/012345/06

over SECTION 12 MARVEL COURT

and especially with the legal force and effect of all benefits and exceptions mentioned and renounced therein, and I/we hereby irrevocably and in rem suam authorise and empower KATE KEATS or

to register the abovementioned sectional mortgage bond against the said property and if necessary to amend the said sectional mortgage bond or the conditions set out in the annexure thereto, as may be necessary for purposes of registration; and generally to do whatsoever shall be necessary or requisite in order to make the said sectional mortgage bond valid or effectual in every respect, and to fulfil the purposes of this authority as fully and effectually to all intents and purposes whatsoever as I/we could do if personally present and acting herein, hereby ratifying, allowing and confirming and promising and agreeing to ratify, allow and confirm all and whatsoever my/our said Attorney and Agent, or any one of them, shall lawfully do or cause to be done by virtue of these presents.

SIGNED at on

AS WITNESSES:
1. ____________________________  ____________________________
2. ____________________________  ____________________________
SECTIONAL CONTINUING COVERING MORTGAGE BOND
(HYPOTHECATING A UNIT)

I/We, the undersigned,

MARK PETERS
IDENTITY NUMBER: 680504 5230 082
Unmarried

herein represented by CATHERINE MOSES
acting under and by virtue of a power of attorney dated at

(herinafter referred to as the 'Mortgagor')

do hereby acknowledge that the Mortgagor is lawfully indebted and bound to

ABC BANK LIMITED
Reg. No. 1999/012345/06

its successors in title, order or assigns (all of whom are hereinafter included in the expression 'the Bank')

for:

1.1 the sum of R8 000,00 (Eight Thousand Rand)
    ('the maximum sum')

and the additional sum of R2 000,00 (Two Thousand Rand)
    ('the additional sum')

of lawful money howsoever and from whatsoever causes arising, including but not restricted to:

1.1.1 existing, future and contingent indebtedness;
1.1.2 indebtedness incurred by the Mortgagor in the Mortgagor's own name, jointly in the names of the Mortgagor and any other person, or in the name of any firm in which the Mortgagor may be trading, either solely or in partnership with others or otherwise;

1.1.3 indebtedness arising from money lent or advanced, or to be lent or advanced, promissory notes or bills of exchange, made, accepted or endorsed, money overdrawn on account, acts of guarantee and suretyship executed by the Mortgagor or given by the Bank on the Mortgagor's behalf, sums disbursed by the Bank in respect of premiums of insurance, stand licences, rates and taxes, commission and charges and costs of recovery of any indebtedness, the utilisation of any other banking facilities, or otherwise howsoever;

1.2 interest on all amounts secured by this bond calculated in the manner and at the rate agreed upon between the Mortgagor and the Bank or, failing such agreement, in the manner and at the rate usually required by the Bank for the kind of transaction in question; and

1.3 costs incurred by the Bank in connection with this bond.

2. AS continuing covering security for:

2.1 the maximum sum in respect of:

2.1.1 existing indebtedness arising from any cause specified in clause 1.1 and elsewhere in this bond; and

2.1.2 future debts generally up to the maximum sum, arising from any cause specified in clause 1.1 and elsewhere in this bond;

notwithstanding any fluctuation in the amount or even temporary extinction of indebtedness to the Bank or extinction of any indebtedness in terms of the Usury Act No. 73 of 1968, as amended or re-enacted or otherwise;

2.2 interest on all amounts secured by this bond;

2.3 the additional sum in respect of:

2.3.1 any additional interest on amounts secured by this bond which are not included in clause 2.2 and which would otherwise not be secured by this bond; and

2.3.2 all costs incurred and/or paid by the Bank in connection with this bond, such as, but not restricted to, insurance premiums, rates, taxes, stamp duties, legal expenses (on the scale as between attorney and client) incurred in suing for recovery of any amount due which is secured by this bond, and expenses and charges incurred to protect the security or otherwise to assist the Mortgagor;
2.4 any additional costs of the kind mentioned in clause 2.3.2 that would otherwise not be secured by this bond;

and as security for the above, the Mortgagor hereby binds as a **SECOND** mortgage, subject to the conditions set out in the annexure to this Bond:

A Unit consisting of:

(a) Section No. 12 as shown and more fully described on Sectional Plan No. SS460/94, in the scheme known as **MARVEL COURT** in respect of the land and building or buildings situate at Vredehoek in the Transitional Metropolitan Substructure of Cape Town, Administrative District of the Cape, Western Cape Province of which the floor area, according to the said sectional plan, is 43 (Forty Three) 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 under **DEED OF TRANSFER**

('the mortgaged unit')

SIGNED at on

______________________________
Mortgagor/duly authorised agent of Mortgagor

Before me, ________________________________

Conveyancer KATE KEATS

Registered at on 200 .

______________________________
REGISTRAR OF DEEDS
Seal of office
ANNEXURE

CONDITIONS OF SECTIONAL CONTINUING COVERING MORTGAGE BOND

1. DEFINITIONS

In this Annexure, unless inconsistent with or otherwise indicated by the context:

1.1 'Bank' means ABC BANK LIMITED Reg. No. 1999/012345/06, its successors in title, order or assigns;

1.2 'body corporate' means any body established in terms of Section 36 of the Sectional Titles Act for the buildings;

1.3 'buildings' means the buildings as shown on the Sectional Plan referred to in this bond;

1.4 'common property' means the common property as shown on the Sectional Plan referred to in this bond, the Mortgagor's interest in which forms part of the mortgaged unit;

1.5 'mortgaged section' means the section forming part of the mortgaged unit;

1.6 'mortgaged unit' means the unit mortgaged in terms of this bond;

1.7 'Mortgagor' means the person named as such in this bond;

1.8 'rule' means the rules (including any house or other rules) of the body corporate from time to time in force under the Sectional Titles Act in respect of the buildings and the common property;

1.9 'Sectional Titles Act' means the Sectional Titles Act No. 95 of 1986, as amended, or any amending or substituted legislation, including the regulations framed thereunder and any reference to a section of the said Act shall be construed as a reference to the equivalent section of such amended, amending or substituted legislation;

1.10 'the Act' means the Usury Act No. 73 of 1968 as amended or any re-enactment thereof;

1.11 'this bond' means the Sectional Continuing Covering Mortgage Bond to which this Annexure is attached;

1.12 Save as provided above, words defined in the Sectional Titles Act shall have the meanings assigned to them in that Act;

2. REPAYMENTS

2.1 The Mortgagor/s shall repay all amounts owing to the Bank under this bond in consecutive monthly instalments of R128,46 (One Hundred and Twenty Eight Rand Forty Six Cents) each, which instalments shall include capital and interest as herein provided. The first instalment is payable within 30 (thirty) days of registration of this bond or, in the case of a building loan, within 30 (thirty) days following that in which the
building is completed or the Bank's final statement of account is submitted, whichever is the earlier. The Mortgagor shall be entitled to select the day of the month on which the first and all subsequent instalments are to be made, provided that if the Mortgagor selects the 29th, 30th or 31st day of the month, then in any month in which there is no such day the instalment shall be payable by the last day of the month.

2.2 Except as otherwise specifically provided, all amounts owing to the Bank which are secured by this bond shall bear interest from the date advances or any other payments are made by the Bank, at the rate of 18% (Eighteen per centum) per annum, reckoned on the daily balance outstanding on the Mortgagor's account and debited to the Mortgagor at the month end.

3. RENUNCIATION OF BENEFITS

The Mortgagor renounces the benefits of the legal exceptions 'non numeratae pecuniae', 'non causa debiti', 'errore calculi', 'revision of accounts', 'no value received', 'excussion and division and de duobus vel pluribus reis debendi', with the force and effect of which renunciations the Mortgagor is fully acquainted.

4. DOMICILIUM CITANDI ET EXECUTANDI

For the purpose of this bond or any proceedings which may be instituted in respect of this bond, domicilium citandi et executandi is hereby chosen by the Mortgagor at the address reflected in the Bank's records as the Mortgagor's last postal address or, at the option of the Bank, or failing the recording of an address, then at the mortgaged section and if more than one section is mortgaged, then at any one of them. Any notice given by the Bank in respect of this bond may, at the Bank's option, be addressed to the Mortgagor at the domicilium referred to in this clause or the Mortgagor's last postal address recorded with the Bank and may be served by prepaid post. Notices so posted shall be deemed to be received by the Mortgagor 3 (three) days after posting. A certificate signed on behalf of the Bank, stating that a notice has been given, shall be prima facie proof thereof, and the authority of the signatory and validity of the signature need not be proved.

5. ADDITIONAL SECURITY

As further security for the repayment and discharge of the aforesaid indebtedness, the Mortgagor hereby:

5.1 cedes and assigns to the Bank, all the Mortgagor's sight and title in and to the rents now arising or which may hereafter arise in respect of the mortgaged unit, or any part thereof;

5.2 appoints the Bank, should the Mortgagor be at any time in arrear with any payment of any indebtedness covered by this bond, to be the attorney of the Mortgagor irrevocably and in rem suam with power of substitution:
5.2.1 to let the mortgaged unit or any part thereof for such term, at such rental and on such conditions as the Bank may think fit;

5.2.2 to recover and receive the rents thereof; and

5.2.3 in default of payment of the said rents or delivery of the premises, to institute action, and to use and employ all lawful ways and means for the recovery of the rents and/or the ejectment of the tenants.

5.3 If the Bank becomes entitled to let the property in terms of clause 5.2, the Mortgagor shall vacate the property on not less than 1 (one) calendar month's notice calling upon him to do so.

5.4 The Bank may charge a commission of 5% (five per centum) of the gross amount of all rents collected and may recover such commission under this bond.

6. INSURANCE

6.1 The Mortgagor shall procure that the body corporate at all times insures to the full replacement value the buildings and all improvements acceding to the common property in terms or Section 37 of the Sectional Titles Act with an insurer approved by the Bank, against all such risks as may be specified by the Bank, and that a value satisfactory to the Bank is allocated to the mortgaged unit in such insurance policy.

6.2 The Mortgagor shall procure that the Bank is named in the policies referred to in 6.1 as a co-insured, to the extent of the Bank's interest as mortgagee.

6.3 The Mortgagor shall procure that the policies referred to in 6.1 shall at all times be valid and enforceable by the Bank against the insurer, notwithstanding any circumstances whatsoever which would otherwise entitle the insurer to refuse to make payment of the amount insured, unless and until the insurer on not less than 1 (one) month's written notice to the Bank shall have terminated such insurance.

6.4 Notwithstanding the aforesaid provisions of this clause, the Bank shall be entitled to insure and keep insured the mortgaged unit and all improvements thereto for such sum, not exceeding the full replacement value thereof, against such risks as the Bank may deem fit, with an insurance company selected by the Bank, at the cost and expense of the Mortgagor. Such policies of insurance shall be taken out in the names of the Mortgagor and the Bank to cover their respective rights and interests. The Bank's interest shall be the amount from time to time owing by the Mortgagor to the Bank from whatsoever cause arising and shall at all times rank in priority to that of the Mortgagor. The Bank shall be entitled to receive from the insurer all moneys payable in respect of any claim under the policy, to the extent of its interest, and any money so received by the Bank shall, at the option of the Bank, be wholly or partially applied towards liquidating the amount owing by the Mortgagor to the Bank at that time, or for the
restoration of the mortgaged section and the common property, on such terms and conditions as the Bank may determine. The provisions of this clause shall *mutatis mutandis* apply to any policy of insurance which may, with the consent of the Bank, be ceded to it as collateral security for the indebtedness of the Mortgagor hereunder.

6.5 The Bank shall be entitled in respect of any insurance effected in respect of the mortgaged section or the common property, to pay any premium of insurance and to recover such premium from the Mortgagor or the body corporate. For the purposes hereof, the Mortgagor hereby authorises the Bank to recover from the body corporate in the name and on behalf of the Mortgagor such premiums of insurance or portions thereof as are payable by the body corporate, provided that the Bank shall in no circumstances whatsoever be liable to the Mortgagor or any other person in respect of any inadequacy or invalidity of insurance.

6.6 Any moneys received by the Bank under the insurance referred to above shall, at the option of the Bank, be applied either in whole or in part payment of the interest and capital charges which may then be due, or for the restoration under such conditions as the Bank or its agents may determine of that which has been damaged or destroyed.

6.7 The Bank shall have the right and be entitled to adjust, settle, compromise and/or submit to arbitration all claims, demands, payments, disputes and matters arising from and under such insurance referred to above and to institute action in respect thereof and to grant receipts for payments made and without reference to the Mortgagor or without requiring the signature of the Mortgagor and in the absolute discretion of the Bank.

7. **MAINTENANCE**

The Mortgagor shall at all times and throughout the currency of this bond, keep and maintain the mortgaged section including all partitions, fixtures, fittings and appurtenances thereto in good substantial and tenantable repair to the satisfaction of the Bank, and keep the mortgaged section in conformity with the requirements of the body corporate and any competent public or local Authority, and shall make no material alterations thereto or to any part thereof or remove the same or any portion thereof without the written consent of the Bank having been first had and obtained. The Bank or its duly appointed agents shall be entitled at all reasonable times to enter upon and inspect the mortgaged section and the common property at the expense of the Mortgagor. Should the Mortgagor have failed to comply with the foregoing conditions, then the Bank in its discretion may, on behalf or and at the sole cost and expense of the Mortgagor effect or expend any sum necessary for the repair, renovation, maintenance and upkeep of the mortgaged section and/or to comply with the requirements of any competent public or local Authority or the body corporate. The moneys expended by the Bank in connection therewith shall immediately be claimable from and repayable by the Mortgagor on demand and shall be secured and preferent under this bond and shall bear interest at the maximum rate permitted by the Act.
8. **LEVIES**

The Mortgagor shall, on or before due date, pay all levies, rates, charges, insurance premiums, rent and other imposts and fees of whatsoever nature which may at any time become owing to the body corporate, any competent public or local Authority or any creditor of the body corporate in respect of the mortgaged unit and shall produce proof to the Bank of such payments. In case the aforesaid levies, rates, charges, insurance premiums, rent or any imposts or portion thereof remain unpaid after due date, the Bank shall be entitled but shall not be obliged to pay such amounts on behalf of and without reference to the Mortgagor and without waiting until the Mortgagor is default therewith, and any and all such amounts so expended shall be preferent under the bond and shall bear interest on the same basis as the other debts secured by the bond and shall be immediately claimable by the Bank from the Mortgagor.

9. **BODY CORPORATE**

The Mortgagor hereby appoints the Bank (represented by any nominee for the time being of the Bank) irrevocably and in rem suam as the Mortgagor's duly authorised attorney, agent, proxy and representative to act on the Mortgagor's behalf, as fully as the Mortgagor personally might do, in all matters relating to the mortgaged unit and the Mortgagor's relationships and dealings with the body corporate and any other owner of any section in the buildings. In particular, but without derogating from the generality of the aforesgoing, the Mortgagor hereby authorises the Bank (represented by any of officer, employee or nominee of the Bank);

9.1 to attend any meeting of the body corporate as the Mortgagor's proxy and to speak and vote at such meeting on the Mortgagor's behalf in such manner as the Bank deems fit, provided that:

9.1.1 if the Bank is represented at any such meeting the Mortgagor shall have no right to speak or vote, such rights being irrevocably vested in the Bank.

9.1.2 for the purposes hereof, the Mortgagor undertakes to sign such additional proxies, powers of attorney or other documents as may be requisite to give effect hereto and to do all other things to enable the Bank to carry out the powers hereby vested in it;

9.2 to demand and receive on the Mortgagor's behalf any notices, documents, accounts or communications from the body corporate or from the insurer to the body corporate, which the Bank may require, hereby undertaking to sign such additional documents and do such things as may be requisite or necessary to enable the Bank to receive such documents from the body corporate or the insurer;

9.3 to exercise all and any rights which the Mortgagor may be entitled to exercise as the owner of the mortgaged unit as if the Bank were the owner;
9.4 to take any steps on the Mortgagor's behalf, including any application to any court or other tribunal or authority;

9.4.1 to compel the body corporate to carry out all or any of the duties or powers imposed upon it in terms of Sections 37 and 38 or any other provisions of the Sectional Titles Act;

9.4.2 to apply on the Mortgagor's behalf for the appointment of any administrator in terms of Section 46 or the Sectional Titles Act; and

9.4.3 to enter appearance on the Mortgagor's behalf to defend and to conduct the defence of any proceeding which may be brought against the Mortgagor as owner of the mortgaged unit whether by the body corporate, the owner or any other section or any other person, and to conduct the defence or proceedings:

and for any such purposes to sign such affidavits, powers of attorney and documents as may be necessary and to employ counsel attorneys or representatives for such purposes;

9.5 to perform on the Mortgagor's behalf all things which the Bank considers necessary to procure the proper insurance of the mortgaged unit and the buildings or common property, and to sign all documents and do all things necessary to give effect thereto; and

9.6 generally, to take all such steps as the Bank in its absolute discretion may deem fit for the protection of the mortgaged unit, the preservation of the rights attaching thereto, the proper conduct of the body corporate, the enforcement of the rights which the Mortgagor and the body corporate may have, and generally to act on the Mortgagor's behalf as the Mortgagor's attorney and agent without any limit whatsoever.

10. CONVEYANCER'S CERTIFICATE

10.1 The Mortgagor shall furnish to the Bank a conveyancer's certificate reflecting all conditions of the sectional plan as it applies to the mortgaged unit or alternatively, pay to the Bank the amount necessary in order to enable it to instruct its own conveyancers to furnish such certificate.

10.2 The Mortgagor grants to the Bank an irrevocable power of attorney in rem suam with power of substitution to act as the Mortgagor's agent in matters affecting the mortgaged unit and to represent the Mortgagor in dealings with the body corporate to protect the Bank's interest.
10.3 The Mortgagor shall provide the Bank’s attorneys with a certified copy of the rules adopted or to be adopted by the body corporate and if this bond is registered simultaneously with the transfer of the first unit, the Mortgagor shall procure an undertaking by the developer in favour of the Bank that on transfer of the mortgaged unit the developer will procure that those rules will in fact be so adopted. The rules of the scheme must be acceptable to the Bank. The Mortgagor shall further make available to the Bank a copy of the body corporate’s last annual accounts, if any.

10.4 The functions of the body corporate are to be carried out by persons who are in the Bank’s opinion competent to discharge such responsibility satisfactorily on behalf of the body corporate.

10.5 The Mortgagor shall procure that the insurers of the building certify to the Bank that:

10.5.1 the body corporate has in terms of Section 37 of the Sectional Titles Act, insured to the full replacement value the buildings and improvements of which the mortgaged unit forms part with an insurer approved by the Bank against all such risks as the Bank may specify.

10.5.2 the amount of cover allocated to the mortgaged unit is not less that amount required by the Bank; and

10.5.3 the Bank is and shall at all times remain a co-insured under such policy of insurance to the full extent of the Bank's interest as mortgagee.

11. NON-LIABILITY OF BANK

Neither the Bank nor any of its agents, employees or nominees shall be liable to the Mortgagor or the Mortgagor’s estate or representatives for any loss occasioned or sustained as result of the exercise of any of the powers or authorities conferred on the Bank by the Mortgagor, except such loss as may be occasioned or sustained as a result of any such agent's, employee's or nominee's dishonesty or wilful misconduct.

12. TITLE DEEDS

The Mortgagor shall, on registration of this bond, deposit with the Bank the Sectional Title Deeds, diagrams, licences and existing leases of the mortgaged unit and thereafter, during the currency of this bond, the Mortgagor shall deposit with the Bank the policies of insurance and leases effected by the Mortgagor in respect of the mortgaged unit together with collateral security documents and receipts for levies paid.

13. SALE OF MORTGAGED UNIT

The Mortgagor shall not without the prior written consent of the Bank sell or dispose of or otherwise alienate the mortgaged unit under a deed of sale on agreement in terms whereof the purchase pace or consideration is payable by more than 2 (two) instalments extending over a period of longer than 1 (one) year. If the Mortgagor breaches this condition, then
without prejudice to the Bank's right to regard the sale, disposal or alienation as a breach of the terms of this bond and notwithstanding anything herein to the contrary contained, the Mortgagor hereby irrevocably cedes, assigns, transfers and makes over to the Bank all the Mortgagor's right, title and interest in and to all the instalments and other sums payable under the aforesaid deed of sale of the mortgaged unit and hereby nominates and appoints the Bank with power of substitution irrevocably and in rem suam to be the Mortgagor's legal attorney and agent for the purpose of recording the deed of sale in the appropriate Deeds registry and/or collecting and receiving the said instalments with power to give and grant proper receipts and acquittances therefor and in default of payment, to institute such legal proceedings for the recovery thereof and/or for cancellation of the deed of sale and the ejectment of the purchaser as the Bank may deem necessary or desirable and if necessary to institute legal proceedings as aforesaid in the name of the Mortgagor. The Mortgagor hereby agrees that the Bank shall be entitled to charge a commission of 5% (five per centum) on the gross amount of all such instalments collected by it as aforesaid in addition to any amount for collection charged by collection agents or rent collectors and to recover all such commission under this bond.

14. LETTING OR MORTGAGING OF MORTGAGED UNIT

The Mortgagor shall not, so long as this bond remains in force, let, mortgage or in any way further alienate, burden or encumber the mortgaged unit or any part thereof, nor shall the Mortgagor give up occupation of the mortgaged section or any part thereof without the prior written consent of the Bank.

15. COMPLIANCE WITH LAWS

The Mortgagor shall, at all times, comply with the conditions of title, the rules of the sectional title scheme, the provisions of all servitudes and town planning schemes and with all laws, bye-laws, ordinances, proclamations and regulations applicable to or incumbent on the Mortgagor or the mortgaged unit.

16. SECURITY

The security afforded to the Bank by this bond shall not be in substitution for, but in addition to, and without prejudice to, any other security or preference of whatever kind watch does, or may, or shall exist in favour of the Bank in respect of the indebtedness aforesaid, or any part thereof.

17. PROOF OF INDEBTEDNESS

The amount of the indebtedness of the Mortgagor to the Bank at any time which is secured by this bond (including interest and the rate at which and the period for which interest is calculable) and the fact that such indebtedness is due and payable may be determined and proved by a certificate stating the same signed by any manager or administrator of the Bank, whose appointment and authority to sign need not be proved. Such certificate shall be prima facie proof of the facts therein stated.
18. **APPROPRIATION OF PAYMENTS**

Payments of all amounts secured by this bond may be appropriated by the Bank towards such of the Mortgagor’s indebtedness to the Bank as the Bank in its sole and unfettered discretion may decide.

19. **JOINT AND SEVERAL LIABILITY**

Should there be more than one Mortgagor, then:

19.1 each of them shall be jointly and severally liable with the other as co-principal debtor *in solidum* for every indebtedness and obligation of the Mortgagor in terms of the bond; and

19.2 all references in the bond and this annexure to the Mortgagor shall be construed as references to all of the mortgagors, jointly and severally, unless the context otherwise indicates or requires.

20. **COSTS**

The Mortgagor shall pay all costs and charges of and incidental to the preparation and registration of this bond including stamp duty thereon and shall also be liable for the costs of cancellation of this bond.

21. **EXPROPRIATION**

If the whole or any portion of the mortgaged section or common property is expropriated under any law or the whole or any portion thereof taken under the provision of any law, provincial or other ordinance or bye-law for road widening purposes or any other purpose whatsoever by any competent authority, the Mortgagor appoints the Bank irrevocably and *in rem suam* to receive all compensation moneys payable in respect thereof and also to make all claims and sign all such documents in regard thereto as may be necessary or desirable and the Bank shall account to the Mortgagor in respect of each such amount received after deduction of all sums due in respect of this bond and the costs incurred by the Bank in regard to such expropriation or other deprivation.

22. **FORECLOSURE**

22.1 If the Mortgagor fails to observe of perform any conditions of this bond or fails to on demand any sum which may be legally claimable by the Bank, or fails to discharge any other obligation or liability to the Bank on its due date, all amounts secured by this bond shall, at the Bank’s option forthwith become payable in full, notwithstanding the exercise by the Bank or any other rights, and the Bank may institute proceedings for the recovery thereof and for an order declaring the mortgaged unit executable.
22.2 The Bank shall also be entitled to surrender or otherwise realise any insurance policy or other security which is ceded or made payable to the Bank as collateral security and to appropriate the surrender value or the amount otherwise realised in reduction of the amount outstanding.

22.3 If the mortgaged unit is attached at the instance of the Bank or any other creditor of the Mortgagor, any prospective purchaser of the mortgaged unit and the Bank acting through its servants, agents and nominees shall be entitled to exhibit 'for sale' notices on the mortgaged unit.

23. **ARREARS**

23.1 If at any time the Mortgagor is in arrears with any payment secured by this bond, the Bank shall be entitled at its election:

23.1.1 without notice, to set-off the amount or part of the amount of such arrear payment against any credit balance or investment which the Mortgagor might have with the Bank, notwithstanding the fact that such credit balance or investment might not constitute a liquid debt for the normal purpose of set-off; and/or

23.1.2 to retain any amounts which would otherwise be due for payment by the Bank to the Mortgagor until such time as the amount in arrear has been repaid in full.

23.2 Notwithstanding anything to the contrary hereinbefore contained, should any instalment not be paid on due date, the Bank will be entitled to charge and recover from the Mortgagor interest on the capital then outstanding at a rate equivalent to 2% (two per centum) above the Bank’s current home loan mortgage rate from the date such instalment became due until the date it is paid.

24. **ARREAR INTEREST**

At the commencement of each month any interest shall be capitalised and shall thereupon form portion of the amount outstanding at the commencement of such month. If any advance or other payment is made by the Bank after the first day of a month, then interest shall be reckoned on the daily balance outstanding on the Mortgagor’s account and debited to the Mortgagor at the end of the month.

25. **NON-WAIVER**

No failure by the Bank to exercise any rights and no indulgence allowed to the Mortgagor shall operate as a waiver or abandonment by the Bank of any of its rights.
26. **JURISDICTION**

The Mortgagor consents in terms of Section 45 of the Magistrates' Courts Act No. 32 of 1944, as amended, to the Bank taking any legal proceedings for the enforcement of any of its rights under this bond or recovery of amounts secured by this bond or otherwise, in the Magistrates' Court of any district having jurisdiction in respect of the Mortgagor by virtue of Section 28(1) of the aforesaid Act.

27. **ACCELERATION OF PAYMENTS**

The Mortgagor shall be entitled at any time in reduction of the Mortgagor's indebtedness to make further payments in addition to the stipulated monthly instalments. If the Mortgagor wishes to pay the outstanding amount of the principal debt and finance charges in one amount prior to the due date of the last instalment, the following provisions shall apply:

27.1 the Mortgagor shall give the Bank not less than 90 (ninety) days' advance notice in writing (or such longer period as may be prescribed by law) of the date on which the Mortgagor will pay the outstanding capital and interest in one amount;

27.2 a notice in terms of 27.1 above shall not be given before the expiry of a period of 90 (ninety) days from the date of payment of the amount secured by this bond to the Mortgagor;

27.3 notwithstanding anything to the contrary herein or elsewhere provided, the date of payment stipulated in a notice given in terms of 27.1 above shall be deemed to be the date on which the outstanding capital and interest became due for payment, provided that the Mortgagor shall still be obliged to pay all instalments and other amounts becoming due for payment up until the date stipulated in the notice given in terms of 27.1 above; and

27.4 if the outstanding capital and interest is paid in full before the expiry of 1 (one) year from the date on which the full amount secured by this bond is advanced by the Bank, the Mortgagor shall pay additional finance charges equivalent to 1% (one per centum) of the total amount of capital paid to the Bank in advance of the due date for payment stipulated herein, to the extent that such additional finance charges may be lawfully recoverable by the Bank.

28. **USURY ACT**

28.1 The Mortgagor authorises the Bank to include in the principal debt:

28.1.1 all costs actually paid or to be paid by the Bank in respect of the preparation, execution and registration of this bond;

28.1.2 taxes, other fiscal charges and licence fees actually or to be paid by the Bank in respect of the mortgaged unit;
28.1.3 any compulsory charges of the body corporate (constituted in terms of Section 36 of the Sectional Titles Act), in respect of any sectional title scheme, actually paid or to be paid by the Bank in respect of the mortgaged unit;

28.1.4 all premiums actually paid or to be paid by the Bank to an insurer in respect of an insurance policy in terms of which the buildings and improvements on the mortgaged unit are insured against loss or damage caused by fire, riot, civil disturbances, earthquake and loss of income and against any other loss or damage against which buildings are ordinarily insured;

28.1.5 all premiums actually paid or to be paid by the Bank to an insurer in respect of a life policy which is ceded to the Bank as security for the repayment of the loan;

28.1.6 all amounts expended by the Bank in respect of transfer duties relating to the mortgaged unit;

28.2 The Mortgagor authorises the Bank to disburse for the account of the Mortgagor such monies as may be necessary or desirable for the following purposes:

28.2.1 the installation or sewerage on the mortgaged unit;

28.2.2 the provision of electricity or water on the mortgaged unit;

28.2.3 the cost incurred in converting the mortgaged unit from leasehold to freehold;

28.2.4 the cost of the division of the mortgaged unit in accordance with a sectional plan in terms of the Sectional Titles Act;

28.2.5 rates, taxes and licence fees in respect of the mortgaged unit;

28.2.6 the maintenance and repair of the mortgaged unit, including the improvements thereon;

28.2.7 the renewal premiums of a fire insurance policy over the mortgaged unit;

28.2.8 legal costs incurred by the Bank in respect of legal proceedings instituted against the Mortgagor for the recovery of any amount or charges referred to in clause 28, including attorney and client charges;

28.2.9 administration fees for maintaining administration of the Mortgagor's account, which amounts shall be debited at monthly intervals;

28.2.10 an initiation fee for services rendered in connection with the registration of this bond;
28.2.11 security variation fees for consenting to any request by the Mortgagor for any variation of the terms of this bond or the delegation of the obligations of the Mortgagor in terms of the indebtedness secured by this bond or the variation of the terms of or the substitution of any deed of suretyship or other collateral security in connection with the indebtedness secured by this bond;

28.2.12 the loan guarantee insurance premiums actually paid or to be paid within the prescribed period by the Bank to a registered insurer in respect of a loan guarantee policy in terms of which the Bank is insured against financial loss suffered by it at a sale in execution held in respect of the property under the circumstances contemplated in the Act.

28.3 The Mortgagor undertakes to repay the Bank all amounts expended by the Bank in terms of 28.2.1 and 28.2.2 above, together with finance charges at an annual finance charge rate at which finance charges are payable on the principal debt which is secured by this bond.

28.4 Notwithstanding anything else to the contrary herein contained, the Bank shall be entitled to charge and recover from the Mortgagor finance charges on any amount owing to the Bank and secured by this bond and also including the amounts or outstanding balance of the amounts referred to in paragraphs 28.2.9 and 28.2.12 above if such amounts are finance by the Bank on behalf of the Mortgagor. Should any such amounts or finance charges on such amounts not be paid by the Mortgagor on due date thereof or should the Bank agree with the Mortgagor to defer the payment of any amount which is owing by the Mortgagor to the Bank, then the Bank shall be entitled to recover from the Mortgagor an additional amount in respect of finance charges in accordance with the provisions of the Act, which additional finance charges may be capitalised monthly and in turn will bear finance charges.

29. **VARIATION OF FINANCE CHARGES**

29.1 The Mortgagor agrees that the Bank shall have the right at any time (and time to time) to vary the annual finance charge rate upon written notice to the Mortgagor, provided that the annual finance charge rate shall not at any time exceed the applicable maximum rate, if any, permitted in terms of the Act. In such event, the finance charges shall be recalculated and the Bank may increase the instalments to such an amount as will ensure that the amount secured by this bond is repaid within the same period as it would have been repaid if the annual finance charge rate had not been varied.

29.2 Notwithstanding anything to the contrary provided in this bond, the Bank shall be entitled initially and from time to time to charge and recover from the Mortgagor finance charges up to the maximum annual finance charge rate permissible in terms of the Act, but which are payable by the Mortgagor in terms of this bond. Without limiting the generality of the aforesaid, the amounts recoverable in terms of this clause shall
include an inspection fee.

30. **BUILDING LOANS**

Where the loan is granted upon the condition that improvements or additions to existing buildings and improvements shall be erected upon the mortgaged unit, the following conditions shall apply:

30.1 the improvements and/or additions to existing buildings and improvements shall be erected on the mortgaged unit in terms of plans and specifications approved of by the Bank and the municipal or other local authority;

30.2 the Mortgagor shall procure that contractor or builder, carpenter and other workmen who might have or acquire a lien on the said buildings and improvements for work done expressly renounce or waive such lien in favour of the Bank, and unless and until such lien shall have been so renounced or waived, the Bank shall be entitled to withhold payment in respect of such loan;

30.3 the capital shall be paid to the Mortgagor from time to time in accordance with the value of the work done on the buildings on the mortgaged unit and the Bank shall be the sole judge as to the amounts to be paid from time to time. The Mortgagor shall be bound and obliged to pay to the Bank a reasonable fee for, and all expenses in connection with any inspection made by the Bank;

30.4 the Bank shall be entitled to decline to make further payments and to claim repayment of the amount already advanced under the loan with interest, charges and expenses, if the work on the building has ceased for a period of 1 (one) week or if in the Bank’s opinion:

30.4.1 the work is not being proceeded with in a satisfactory manner; or
30.4.2 there is undue delay in carrying out the work; or
30.4.3 improper or inferior materials or workmanship are being put into the work; or
30.4.4 workmen, contractors or suppliers of building material are not being regularly paid;

30.5 the Bank and its agents, contractors and workmen shall have the right to enter upon the mortgaged unit and carry on and complete the said building or additions to buildings in any of the contingencies contemplated in clause 30.4. This right may be exercised before as well as after the Bank shall have given notice claiming repayment of the amount secured by this bond and shall not prejudice the Bank in claiming payment at any time of any amount then due, after or during the carrying out of such work, without further notice;
30.6 the Bank shall have the right to require inferior materials to be removed and inferior work rectified forthwith and in case of neglect or refusal to do so, to cause such materials to be removed and such work to be rectified by its own agents, contractors and servants at the cost and expense of the Mortgagor and all rights and privileges accruing to the Bank in terms of clause 30.4 shall likewise vest in the Bank in respect of the cost of work done under clause 33.6;

30.7 the Bank shall have the right, in the contingency contemplated in clause 30.4.4 to pay such contractors, workmen and suppliers of material out of the loan or any balance thereof remaining in its hands. The receipts of such contractors, workmen and suppliers shall constitute a good discharge as against the Mortgagor. Such payments shall not prejudice the Bank in regard to any notice given or which may be given calling up the loan;

30.8 no cession of the whole or any portion of the monies to be advanced shall be recognised unless and until the written consent of the Bank to such cession has been obtained.

31. **EMPLOYEE CLAUSE**

Where any loan has been granted upon the condition that the Mortgagor's employer stands surety for and/or secures the indebtedness of the Mortgagor under this bond, the following shall apply:

It is recorded that the Mortgagor's employer has stood surety for and/or secured repayment of portion of the capital to be lent by the Bank to the Mortgagor. Notwithstanding anything to the contrary herein contained, if the Mortgagor should cease to be employed by such employer for any reason whatsoever, the Mortgagor shall make arrangements satisfactory to the Bank for the release of the Mortgagor's employer from such suretyship and/or security and failing such arrangements being made within 30 (thirty) days of the Mortgagor ceasing to be so employed, the capital, additional sum and interest and any other sum whatsoever owing by the Mortgagor to the Bank shall be considered as legally claimable and due forthwith and the terms of clause 22 of this bond shall be operative.

32. **REARRANGEMENT OF FACILITY**

No rearrangement or alteration of the terms and conditions of any loan or other facility, or of this bond shall prejudicially affect the operation of this bond or the security granted hereunder, nor constitute a novation of the debt nor affect the rights of the Bank to sue in terms of this bond in the same manner as if no such arrangement or alteration has been made; and all the provisions of this bond shall mutatis mutandis shall apply to all or any such rearrangement or alteration (other than those specifically altered in writing which refer to this clause 32 and which are signed by the Mortgagor and the Bank) as fully and effectually for the purposes of applying for provisional sentence or judgment under this bond as if such rearrangement or alteration had been originally contained in this bond.
33. **AGRICULTURAL CREDIT ACT**

For the purposes of this bond the Mortgagor hereby:

33.1 undertakes that during the subsistence hereof the Mortgagor will not without the prior consent in writing of the Bank apply for or accept assistance under the Agricultural Credit Act No. 28 of 1956, as amended, or any re-enactment thereof: and (as a separate undertaking)

33.2 waives insofar as it is legally competent for the Mortgagor to do so, all benefit and protection of or under the Agricultural Credit Act No. 28 of 1966, as amended, and undertakes that the provisions of the said Act (of which the Mortgagor is fully aware) shall not apply as against the Bank.

34. **HEADINGS**

The headings have been inserted for convenience only and are not to be taken into account for the purpose of interpreting this bond.

35. **INTERPRETATION**

35.1 In the interpretation of this bond, unless the context otherwise requires or indicates, words signifying:

35.1.1 the singular shall include the plural and *vice versa*;

35.1.2 any one gender shall include the other genders; and

35.1.3 natural persons shall include juristic persons, trusts, partnerships, associations, deceased estates and insolvent states.

35.2 If there is any conflict between the terms of this bond and the instrument of debt, the terms of the instrument of debt shall prevail.

36. **VARIATION**

No agreement to vary or add to the terms of this bond shall be of any force or effect unless reduced to writing and signed by or on behalf of the Bank.

______________________________  
Mortgagor/Duly authorised agent of Mortgagor

______________________________  
Conveyancer
## ANNEXURE V

### Description of Persons: Examples

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<th>Vesting: PA / Deed / Bond (Transferee / Mortgagee)</th>
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<td>Unmarried; widowed; divorced As for Preamble</td>
<td>George Lucas Identity Number 520706 5454 080 Unmarried</td>
<td>Same as for transferor in preamble and pa</td>
</tr>
<tr>
<td>Married in Community of Property As for Preamble</td>
<td>Luke Skywalker Identity Number 620504 5321 080 and Leia Skywalker Identity number 660309 0234 081 married in Community of Property to each other</td>
<td>As for transferor in preamble and pa</td>
</tr>
<tr>
<td>Persons married Out of Community of Property As for Preamble</td>
<td>George Lucas Identity Number 520706 5454 080 Married Out of Community of Property</td>
<td>Same as for transferor in preamble and pa</td>
</tr>
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<td>Customary marriages</td>
<td>See notes under 'Customary marriages'.</td>
<td>See notes under 'Customary marriages'.</td>
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<tr>
<td>Civil unions</td>
<td>See notes under 'Civil unions'.</td>
<td>See notes under 'Civil unions'.</td>
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<tr>
<td>Marriages: Hindu / Moslem rites As for Preamble</td>
<td>Faried Adams Identity Number 690812 5632 080 Married according to Moslem / Hindu Rites</td>
<td>As for preamble</td>
</tr>
<tr>
<td>Natural persons – married by foreign law as for Preamble governed by country of husbands domicile</td>
<td>Luke Skywalker Identity Number 620504 5321 080 married, which marriage is governed by the laws of France, and assisted by his wife, Leia Skywalker as far as needs be</td>
<td>Luke Skywalker Identity Number 620504 5321 080 married, which marriage is governed by the laws of France</td>
</tr>
<tr>
<td>Woman – property in former / maiden name As for Preamble</td>
<td>Leia Skywalker (formerly / born Princess) Identity number 660309 0234 081 Unmarried / widow / divorced</td>
<td>No former or maiden names disclosed</td>
</tr>
<tr>
<td>Companies Harry Potter duly authorised hereto by a resolution of the directors of Wizards R Us (Proprietary) Limited Registration Number 2003/012345/07</td>
<td>Wizard R Us (Proprietary) Limited Registration Number 2003/012345/07</td>
<td>As for transferor in preamble</td>
</tr>
<tr>
<td>Close Corporations Ron Weasley duly authorised hereto by the members of Abra-ka-dabra CC Registration Number 2003/006789/23</td>
<td>Abra-ka-dabra CC Registration Number 2003/006789/23</td>
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# PROPERTY LAW AND CONVEYANCING

**Study Guide**

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*Property Law and Conveyancing Study Guide*

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INTRODUCTION

Welcome to this Paralegal Studies course, called Property Law and Conveyancing. The South African School of Paralegal Studies has developed this course. We hope you enjoy your studies!

This course comprises of course notes, lectures and self-assessment questions and answers. It is competed by a written examination. Your study skills will include self-direction and responsibility. However, you will gain a lot from the experience! These study skills will contribute to your life skills, which will help you to succeed in all areas of life.

We would like you to succeed, so we will help you with your study responsibilities, by assisting you all the way. Remember that you can contact The South African School of Paralegal Studies when you have queries or need motivation. The contact details have been given to you on registration.
HOW TO USE THIS STUDY GUIDE

The purpose of this study guide

We have designed this study guide to help you work through your study unit. You can see the details of your study session in the study schedule.

We suggest that you briefly skim read through the entire guide to get an overview of its contents.

The study guide will help you with the following:

• to gain a bigger picture on the contents of your entire course; for this, you should look at your study schedule; and
• to work through your study material systematically and purposefully; for this, you should adhere to the instructions given in the study session.

Your study schedule

Your study schedule in this guide is a summary of your study session, and clearly indicates the following:

• the contents of the study session; and
• which topics are covered in your study unit.

Your study session

Your study session includes the following:

• the prescribed reading for the study session;
• the learning outcomes for the study session;
• some additional notes (if applicable); and
• a checkbox to help you check your competence of the outcomes.

We’ll explain what we mean by each of the terms in *italics* above – we’ll use these terms in your study schedule and study session.

Prescribed reading

Your prescribed reading for the study session refers to your study unit. You should work through the study unit for the study session.
The study unit includes the following:
- *learning outcomes* for the lesson;
- *examples*; and
- *self-assessment questions* and *answers*.

We’ll now explain the above-mentioned terms in *italics*.

**Learning outcomes**

The lesson contains learning outcomes, which indicate what you should be able to achieve after you have worked through the lesson. You should focus on these outcomes as you work. These learning outcomes are also included in this guide, for your convenience, with a check-your-competence tick box at the end of the study session.

**Examples**

You will find examples throughout your study units. The examples will help you learn concepts or acquire a practical skill.

**Self-assessment questions and answers**

You will find self-assessment questions and answers in this study guide. Although you do not have to send the answers to the self-assessment questions to the College for marking, you should still answer the questions. Your answers will give you an indication of how well you have understood your study material.

When you answer the questions, don’t look at the suggested answers that we give. Look at them only after you’ve written your answers and then compare your answers with those given.

**Learning outcomes**

The learning outcomes in your study session comply with the learning outcomes in your study unit. They indicate what you should be able to achieve after you have worked through the relevant study material.

**Additional notes**

Make sure that you understand and can apply the additional notes in the study session.
We drew up this study schedule to give you an overview of:

- how the study session is linked to your study unit;
- the topics covered in the study unit.

Your study schedule also shows you the topics of the study session.

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Prescribed reading

For this Study Session, read the following study material:

- Property Law and Conveyancing Notes
- Property Law and Conveyancing Annexures

Learning outcomes for Study Session: Property Law & Conveyancing

After you have completed this Study Session, you should be able to do the following:

- Outline the system of deeds registration and land survey in South Africa and the role of the conveyancer in this registration system.
- Display a knowledge and understanding of the legal formalities required and the usual clauses found in a deed of sale.
- Apply the regulations for the preparation and layout of deeds and documents to be registered at the deeds office.
- Apply the correct sequence of steps and legal formalities required for different conveyancing procedures, in other words:
  - the transfer of immovable property;
  - the registration of mortgage bonds;
  - the cancellation of mortgage bonds;
  - applications;
  - consolidation of property;
  - subdivision of property
  - deceased estate transactions;
  - sectional titles.
- Display a knowledge and understanding of personal and praedial servitudes.
- Display a knowledge and understanding of sectional titles procedures.

How to study

- Look at your study schedule to see what topics you need to study.
- Then work through the entire study unit and the annexures.
- Ensure that you give yourself enough time to work through the study material thoroughly.
- If you have difficulty with any section of your work, contact your tutor.