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# Legal Practice Act, **Are you ready?**

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The South African Legal Practitioner:  
A commentary on the Legal Practice Act  
By Pat Ellis SC, Albert Lamey & Lizelle Kilbourn

[The South African Legal Practitioner - A commentary on the Legal Practice Act](#) by Pat Ellis SC and Albert Lamey was launched in July 2017. The second issue will be published in December 2018 and introduces a new chapter by Lizelle Kilbourn aimed at conveyancers and notaries.

The second issue also covers the salient aspects of the new Code of Conduct for legal practitioners, the Rules and Regulations especially with reference to discipline and vocational training. Available in looseleaf (print and mobile) and online – it is an essential handbook for all attorneys and advocates.

## As an attorney and advocate

Sharpen your knowledge on the Legal Practice Act to ensure your practice is ready for the new regime and your risk of contravention is minimised.

The National Forum has completed its functions and the new Legal Practice Council has been elected. It is a new dawn for the legal profession as we enter the final phase of implementation of the Legal Practice Act (LPA) with the newly elected Council bound to take office soon and to commence their work necessary before the remainder of the chapters of the LPA can commence.

Legal practitioners need to stay abreast of the changes as they will impact the way they practice law. The South African Legal Practitioner explores the most important principles underlying the practice of law in South Africa and the significant consequences of the LPA. This publication draws a comparison between the existing legal position and what is anticipated to be the new dispensation under the LPA.

This is the first comprehensive handbook on legal practice under the new Act covering the new South African Legal Practice Council, entry into the profession, fees and costs, professional conduct and discipline, the Fidelity Fund, handling of trust monies, the new regime for vocational training and competency assessments and the impact of the LPA on Conveyancers and Notaries.

Since the launch of the publication and towards finalising the task of the National Forum, the following was published:

- On 18 January 2018, the Legal Practice Amendment Act, 2017.
- On 9 June 2018, a memorandum for Candidate Attorneys currently serving articles was approved by the National Forum's Rules Review Committee.
- On 20 July 2018 the Rules required by sections 95(1), 95(3) and 109(2)(a) of the Act were published.
- On 31 August 2018, the Regulations under section 109(1)(a) were published.

These updates have been included as Appendices in the publication.

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## THE AUTHORS HAVE UPDATED EACH CHAPTER IN ORDER TO INCORPORATE THE SALIENT FEATURES OF THE REGULATIONS AND RULES

### FEE ESTIMATES

Legal practitioners will be required to provide a prospective client with a fee estimate for the full matter before engagement of legal services.

### POST QUALIFICATION PROFESSIONAL DEVELOPMENT

A requirement for post-qualification professional development continued legal training. It is envisaged that a system of compulsory acquisition of points earned through further study at various academic and professional institutions will be introduced.

### PAY FOR PUPILS

Every pupil undergoing practical vocational training in terms of a practical vocational training contract shall be entitled to reasonable remuneration, allowances or stipends (if any) as may be determined from time to time by the Council. This is a new principle, and differs markedly from the practice in the past, where a pupil was not paid during pupillage.

### COURSEWORK FOR PUPILS

A person intending to be admitted and enrolled as an advocate must, prior to or during service under a practical vocational training contract complete a programme of structured course work, comprising compulsory modules, of not less than 400 notional hours duration in the aggregate over a period of no longer than six months.

### VOLUNTARY ASSOCIATIONS

The authors consider the importance of retaining Voluntary associations, which will focus on the interests of the profession as opposed to the regulatory body, which may, in certain circumstances trump the client's interest.

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### COMMUNITY SERVICE

Candidate legal practitioners could be required to perform community service as part of vocational training but this has not yet been covered by the Rules of the Regulations.

### THERE IS A MORE DETAILED DISCUSSION OF THE NEW CODE OF CONDUCT.

- The Code of Conduct for Legal Practitioners will take effect when Chapter 2 of the Legal Practice Act comes into effect. The Code will apply to attorneys, conveyancer and notaries, advocates, candidate attorneys and pupils as well as to legal practitioners who are not in private practice (i.e. 'corporate counsel').
- Part VI of the Code covers interviewing of witnesses, interviewing witnesses of the opposing party in civil proceedings, the scope and limits of legitimate cross-examination, disclosure and non-disclosures by legal practitioners and conflicts of interests. These are important standards, which were not previously codified for attorneys.

### A NEW CHAPTER ON CONVEYANCERS AND NOTARIES BY LIZELLE KILBOURN AN ATTORNEY, NOTARY AND CONVEYANCER.

- The requirements for the admission and enrolment of conveyancers and notaries are discussed with a comparison of the current legal position and the position under the LPA.
- The highly publicised case of Proxy Smart Services (Pty) Ltd v Law Society of South Africa is discussed. It is submitted by the author that conveyancing involves legal processes that are intended to give effect to preceding legal actions, and as a result, should be executed by persons admitted to the practice of law. "The way in which the conveyancing profession is structured, especially in relation to the statutory and common law provisions which obliges conveyancers to accept responsibility for the accuracy of key facts in the conveyancing process, underpins the integrity of the South African deeds registration system."

*Lizelle Kilbourn, co-author (Attorney, Conveyancer and Notary Public)*

The previous legislation governing the legal profession provided for self-regulation of the members of the Law Societies and the various Bar councils. The new Legal Practice Council comprises of academics, legal aid and fidelity fund representatives and representatives appointed by the Minister of Justice. How will this mix enhance the better functioning of the legal profession and legal practitioners whilst continuing to maintain their independence?

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