



SOUTH AFRICAN LAW: A GUIDE

There may be a time in your life when you are faced with a situation that requires legal support. Understanding the country's legal system will ensure that you choose the right person to provide legal advice applicable to your specific situation and that your rights are protected.

LegalWise provides information on the legal system in South Africa.

As with a doctor, every person needs a lawyer (legal professional) at some point in his/her life, be it to draw up a will, get married, get divorced or to buy a house. It is important to establish when to deal with what type of legal professional. Legal professionals include attorneys, advocates and so on.

Who is considered to be a lawyer?

- › A lawyer is considered to be a person practicing law, by giving legal advice, drawing up legal documents and providing representation to persons in legal disputes, in exchange for a fee ('legal services').
- › A lawyer can pursue different legal professions, such as, being an attorney, advocate, notary or conveyancer.
- › The differences between these legal professionals are their practicing requirements and the nature of their work.

What is an attorney?

- › Similar to a general practitioner ('GP') in the medical profession, an attorney can be seen as the GP of the legal profession, in that s/he provides a broad range of legal services, and needs to be readily available to everyone (the public).
- › Some attorneys appear on behalf of their clients in lower courts and other institutions, and others appoint advocates to appear. Only an attorney with the necessary certificate of appearance may appear in higher courts.
- › Attorneys wear robes when appearing in lower courts.
- › For a person to practice as an attorney s/he has to comply with the

following requirements, although these requirements may change in the near future:

- › **A fit and proper person:** this refers to the person's integrity (characteristics and honesty). A person must also be older than 21 years of age; a South African citizen; or entitled to permanent residence or ordinarily resident in South Africa.
- › **Duly qualified:** has obtained an LLB degree.
- › **Properly trained:** has passed the practical examination, attended the practical training course and completed his/her contract of articles under supervision of an experienced attorney.
- › **Applied to the High Court:** upon application was admitted and enrolled as an attorney.
- › A person who has been admitted and enrolled in the High Court to practice as an attorney will be listed in a register called a roll. If an attorney is not listed on the roll, struck from the roll or suspended s/he may not practice law.
- › The Law Society regulates attorneys and investigates complaints against attorneys.

What is an advocate?

- › Similar to a surgeon in the medical profession, an advocate can be seen as a surgeon in the legal profession, in that s/he specialises in court appearances and is in most instances only available through an attorney.
- › Advocates may appear on behalf of the attorneys' clients in any court and other institution, especially higher courts.
- › Advocates wear robes when appearing in higher courts, but not in lower courts.

- › For a person to practice as an advocate s/he has to comply with the following requirements, although these may change in the future:
 - › **A fit and proper person:** this refers to the person's integrity (characteristics and honesty). A person must also be older than 21 years of age; a South African citizen; or entitled to permanent residence or ordinarily resident in South Africa.
 - › **Duly qualified:** obtained an LLB degree.
 - › **Applied to the High Court:** upon application was admitted and enrolled as an advocate.
- › A person who has been admitted and enrolled in the High Court to practice as an advocate will be listed in a register called a roll. If an advocate is not listed on the roll, struck from the roll or suspended s/he may not practice law.
- › The Bar Association regulates advocates and deals with complaints against advocates.

What is a conveyancer?

- › Similar to a specialist in the medical profession, a conveyancer can be seen as a specialist in the legal profession, in that s/he specialises in the transfer of ownership of a property from one person to another, for example, a house or a farm.
- › Conveyancers are attorneys, however, not all attorneys are conveyancers.
- › For a person to practice as a conveyancer s/he has to comply with the following requirements, although these may change in the future:
 - › **Duly qualified:** admitted as an attorney.
 - › **Properly trained:** passed the practical examination for conveyancers.
 - › **Applied to the High Court:** upon application was admitted and enrolled as a conveyancer.
- › The Law Society regulates conveyancers and investigates complaints against conveyancers.

What is a notary?

- › Similar to a specialist in the medical profession, a notary can be seen as a specialist in the legal profession, in that s/he specialises in the drawing up and registration of special legal documents, for example, ante-nuptial contracts or long-term lease agreements.
- › Notaries are attorneys, however, not all attorneys are notaries.
- › For a person to practice as a notary s/he has to comply with the following requirements, although these may change in the future:
 - › **Duly qualified:** admitted as an attorney.
 - › **Properly trained:** passed the practical examination for notaries.
 - › **Applied to the High Court:** upon application was admitted and enrolled as a notary.
- › The Law Society regulates notaries and investigates complaints against notaries.

Does everyone have access to a legal professional?

Although any person may go to a legal professional for legal services, not every person will be able to afford the fees and expenses charged for the rendering of these legal services. For these individuals there are different forms of legal aid available, for example, pro bono legal services, the Legal Aid Board, law clinics, justice centres and legal insurance.

What is legal insurance?

Legal insurance provides a person with cover, for potential fees and expenses charged by legal professionals in the rendering of necessary legal services, in exchange for small monthly premiums. This cover will be subject to the terms and conditions of the insurer. LegalWise provides legal insurance to its members.

Q & A WITH LEGALWISE

Q: What is the law?

A: The law is a system of rules regulating the behaviour of persons in a specific area, such as, South Africa. The law is made by the government and enforced through penalties for non-compliance.

Q: What are courts?

A: Courts decide on penalties for non-compliance with the law. Courts are independent, subject to the law. The rank order of courts is important because the lower courts are bound by the decisions of the higher ranking courts.

Q: What courts are considered to be higher courts?

A: The High Court, Supreme Court of Appeal and Constitutional Court are considered to be higher courts. The High Court is bound by decisions made in the Supreme Court of Appeal and the Constitutional Court. The Supreme Court of Appeal is bound by decisions of the Constitutional Court. The Constitutional Court is the highest ranking court.

Q: What courts are considered to be lower courts?

A: The Magistrate's Court is considered to be a lower court. The Magistrate's Court consists of District Courts and Regional Courts. The Magistrate's Court is bound by the decisions made in the High Court. The Small Claims Court is also considered as a lower court.

Q: What is a legal advisor?

A: A legal advisor is a legal professional employed by the government, companies and/or financial institutions, to provide in-house legal services.

Q: What are pro bono services?

A: Pro bono services are free legal services provided by a lawyer to the public when s/he feels that the specific circumstances merit it.

Q: What is the Legal Aid Board?

A: It is a statutory body that provides a person, with a low household income, access to legal services. A Legal Aid Board officer may be approached to enquire whether a person qualifies for assistance.



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