



# LEGAL PRACTITIONERS FIDELITY FUND

SOUTH AFRICA

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## Payment of Unclaimed and Unknown trust monies in accordance with Section 87(4) of the Legal Practice Act, No. 28 of 2014

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### 1. Introduction

The remaining Chapters of the Legal Practice Act, No. 28 of 2014 (LPA) came into effect on 1 November 2018, and the Legal Practitioners and all relevant stakeholders are reminded about the requirements of section 87(4)(a), which make it mandatory for Legal Practitioners to pay any unclaimed and unknown monies held in a trust account to the Legal Practitioners' Fidelity Fund (LPFF).

Section 87(4)(a) and (b) of the LPA states that:

- a) *Any money held in the trust account of a trust account practice in respect of which the identity of the owner is unknown, or which is unclaimed after one year, must, after the second annual closing of the accounting records of the trust account practice following the date upon which those funds were deposited in the trust account of the trust account practice, be paid over to the Fund by the trust account practice.*
- b) *Nothing in this subsection deprives the owner of the money contemplated in paragraph (a) of the right to claim from the Fund any portion as he or she may prove an entitlement to.*

### 2. Application of Section 87(4)(a) of the Legal Practice Act, No. 28 of 2014

The requirements of section 87(4)(a) must not be applied retrospectively, in respect of deposits made prior to 1 November 2018, and for this reason, the trust account practices<sup>1</sup> with financial period ending on or after 30 November 2020, are required to comply with section 87(4)(a) requirements.

In the context of retrospective application of section 87(4)(a), the first and second annual closing of accounting records, as well as the date on which payment of unclaimed and unknown trust monies must be made to the LPFF, are illustrated below:

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<sup>1</sup> A trust account practice, in terms of the LPA, means a practice conducted by one or more attorneys who are; or an advocate referred to in Section 34(2)(b) who is, in terms of this Act, required to hold a Fidelity Fund certificate.

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First annual closing of accounting records	Second annual closing of accounting records	Payment to the LPFF
30 November 2018	30 November 2019	After 30 November 2019 but before 30 November 2020
28 February 2019	28 February 2020	On or after 30 November 2020 but before 28 February 2021

In addition to the requirements of section 87(4)(a), **the Practitioner's Annual Statement on Trust Accounts**, which is included in Schedule 8 of the LPC Rules<sup>2</sup>, requires: *"Legal Practitioners to provide a reconciliation of any money held in the trust account of a trust account practice in respect of which the identity of the owner is unknown or which is unclaimed after one year, which must be paid over to the Fund after the second annual closing of the accounting records of the trust account practice following the date upon which those funds were deposited in the trust account of the trust account practice"*.

### **3. Procedure to be followed for payment of unclaimed and unknown trust monies to the LPFF in accordance with section 87(4)(a) of the LPA**

To pay unclaimed and unknown trust monies to the LPFF in accordance with section 87(4)(a) of the LPA, the following information should be submitted to the LPFF:

Unclaimed Trust Money	<ul style="list-style-type: none"> <li>▪ A trust account practice's covering letter               <ul style="list-style-type: none"> <li><input type="checkbox"/> confirming the amount of unclaimed trust monies that should be paid to the LPFF; and</li> <li><input type="checkbox"/> the type of trust account/(s) where the unclaimed trust monies were held by the trust account practice (e.g., section 86(2), section 86(3), or section 86(4))</li> </ul> </li> <li>▪ A spreadsheet detailing the following information:               <ul style="list-style-type: none"> <li><input type="checkbox"/> <i>Date Received</i></li> <li><input type="checkbox"/> <i>Name of Client</i></li> <li><input type="checkbox"/> <i>Last Known Address</i></li> <li><input type="checkbox"/> <i>ID number (if available)</i></li> <li><input type="checkbox"/> <i>File reference number</i></li> <li><input type="checkbox"/> <i>Amount Due</i></li> </ul> </li> </ul>
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<sup>2</sup> The South African Legal Practice Council Rules made under the authority of Sections 95(1), 95(3) and 109(2) of the Legal Practice Act, No. 28 of 2014 (as amended)



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<p>Unknown Trust Money</p>	<ul style="list-style-type: none"> <li>▪ A trust account practice's covering letter             <ul style="list-style-type: none"> <li><input type="checkbox"/> confirming the amount of unknown trust monies that should be paid to the LPFF; and</li> <li><input type="checkbox"/> the type of trust account/(s) where the unclaimed trust monies were held by the trust account practice (e.g., section 86(2), section 86(3), or section 86(4))</li> </ul> </li> <li>▪ A spreadsheet detailing the following information:             <ul style="list-style-type: none"> <li><input type="checkbox"/> <i>Date Received</i></li> <li><input type="checkbox"/> <i>Deposit Description</i></li> <li><input type="checkbox"/> <i>Amount</i></li> </ul> </li> </ul>
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After the above-mentioned documents have been submitted to the LPFF, the letter confirming the LPFF's banking details and a reference number that the Legal Practitioners should use for payment of unclaimed and unknown trust monies will be provided to the legal practitioner.

#### **4. Procedure to be followed to claim a refund from the LPFF when the beneficiary of the unknown and unclaimed trust monies has been found**

Section 87(4)(b) of the LPA states that: *"Nothing deprives the owner of the money contemplated in paragraph (a), the right to claim from the Fund any portion as he or she may prove an entitlement to"*.

In terms of section 87(4)(b), the owner of the unclaimed and unknown trust monies that were paid to the LPFF in accordance with section 87(4)(a), has the right to claim any portion as he or she may prove an entitlement to.

When the rightful owner of the unknown and/or unclaimed trust money has been found, the LPFF will refund these trust funds upon receipt of a written request from the Legal Practitioner. The process to refund these trust funds is as follows:

- 4.1.** A trust account practice's covering letter requesting the refund on behalf of their client should be submitted to the LPFF. The covering letter should be accompanied by:
- affidavit from the client.
  - certified copy of the client's ID.
  - A letter confirming the trust account practice's trust banking account details.



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**4.2.** On receipt of the written request from the Legal Practitioner, the LPFF will:

- Record the application on the system.
- Verify information provided by the Legal Practitioner.
- Process payment to the Legal Practitioner, who will in turn make payment to their client.

Please contact the Trust Interest Portfolio Officers at the LPFF, for any queries relating to section 87(4) of the LPA:

Area	Contact details
Northern Provinces (Gauteng, Limpopo, Mpumalanga, and North- West)	<a href="mailto:ida.nchoe@fidfund.co.za">ida.nchoe@fidfund.co.za</a>
Western Cape	<a href="mailto:thoraiya.karriem@fidfund.co.za">thoraiya.karriem@fidfund.co.za</a>
KwaZulu Natal	<a href="mailto:cynthia.naidoo@fidfund.co.za">cynthia.naidoo@fidfund.co.za</a>
Eastern Cape, Free State and Northern Cape	<a href="mailto:herman.rothman@fidfund.co.za">herman.rothman@fidfund.co.za</a>

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**25 May 2022**