

Notarial Duties and Functions

Lecture Title: Putting Theory into Practice in the Notarial Context

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**Undergraduate Certificate in Notarial Law
Fundamentals for Office Assistants**

When a client enters the office, the first thing that a Notary or Notarial Assistant should ask for is official documentation, that is an Identification Card.

Any advice given to a client should be based on official documentation and contracts. Therefore, if a client needs advice on a property, one should ask for his contract of acquisition.

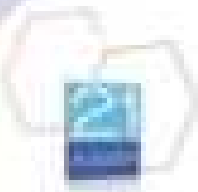


The Promise of Sale

The promise of sale, commonly known as 'il-Konvenju' is a Private Agreement between private parties which is antecedent to a contract of sale. The promise of sale creates an obligation to carry out the sale according to the stipulated terms and conditions.

It is a well-established practice for the Purchaser to select the Notary to draw up the promise of sale and carry out the subsequent work leading up to the final contract.

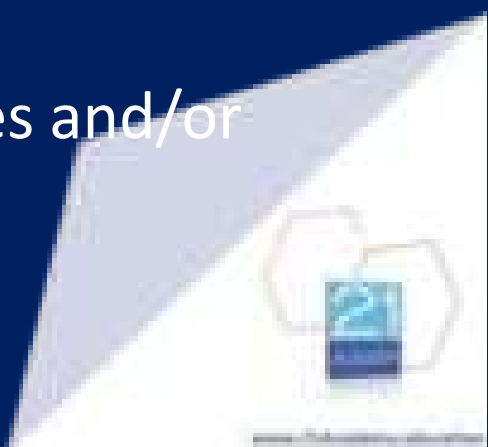
The Notary is normally a witness to the parties' identity, their signature and the contents agreed upon.



What are the documents that should be provided at Promise of Sale stage?

The Vendor/ Seller:

- Identity card or Passport
- A Copy of the Contract of acquisition, which can be a contract of sale, donation, or Declaration Causa Mortis and will.
- The property's building permit and plans
- If the immovable was acquired during marriage, both spouses need to be present.
- If the seller cannot for any reason be present, a power of attorney duly witnessed by a legal professional.
- In the case of a company, a copy of the Memorandum and Articles and/or Resolution of the Board of Directors.



The Purchaser:

- Identity card or Passport
- Deposit, usually amounting to 10% of the selling price. The Notary cannot accept more than €10,000 in cash. Therefore, the deposit is to be in the form of a bank draft or personal cheque. The deposit is to be deposited by the Notary in his Clients Account.
- Payment of 1% of the Duty on Documents due for the registration of the promise of sale



The payment of the deposit upon the signing does not mean that the property has been transferred. When the deposit is paid on 'account of the price', the sum paid is considered to be part of the price. Both parties are obliged to appear on the contract.



The Notary is to register the promise of sale within 21 days of the date of the signing of the promise of sale, with the Commissioner for Revenue

The CFR will then issue a notification letter, which states the Promise of Sale Number. This number is the identification number of the promise of sale.



During the term of the promise of sale, the Notary is to order the relative searches, and examine the title of the property. Searches in the Public Registry are carried out in the Seller's title and liabilities, and on prior owners where applicable. In this manner it is possible to ascertain the title of the property and whether any hypothecs affect the property.

On the other hand, searches into the transfers of the Purchaser may be required to ascertain whether a person qualifies as a first time buyer.



If the purchaser needs a banking facility (bank loan) to acquire the property, after the promise of sale, he needs to apply for a bank loan, and he is obliged to provide the 'sanction letter' to the Notary within a specified period ex: twelve weeks.

The purchaser also needs to ensure that the House and Life insurances requested by the bank are in order.

When a bank loan is needed, the deed is signed at the Premises of the Bank.



During the term of the Promise of Sale, the Notary also requests from the Purchaser a Land Registry site plan, duly marked by his Architect. This Land Registry plan is used by the Notary to submit a 'Form E' at the Land Registry to ascertain whether the property lies in a 'compulsory land registration area' or 'out of registration area'.

Should the property lie in a compulsory registration area, the purchaser may need to provide the Notary with the internal plans of the property.

If it results from the Form E search that the property lies in a Registration Area, the Notary is to register the deed both in the Public Registry and Land Registry.



If the Seller is foreign or intends to set up residence abroad after the sale of the property, prior to the publication of the contract , a certificate is to be obtained from the Commissioner for Revenue, stating that there is no objection on their part to proceed with the sale.

If on the other hand, the Purchaser is a non-Eu Citizen or an EU citizen buying property not intended to be used as an ordinary residence, or to exercise his business, the Notary needs to apply for an Acquisition of Immovable Property from the Ministry of Finance.



Money Laundering and Customer Due Diligence

The crime of money laundering has become sought for by criminal offenders as an easy way of generating funds. Simply put, money laundering is a crime through which the origin or ownership of illicit assets is disguised with the aim of providing a legitimate façade to the said assets.

Robinson states that “Money Laundering is called what it is because that perfectly describes what takes place - illegal, or dirty, money is put through a cycle of transactions, or washed, so that it comes out the other end as legal, or clean, money. In other words, the source of illegally obtained funds is obstructed through a succession of transfers and deals in order that those same funds can eventually be made to appear as legitimate income”



At the beginning of a new transaction, the Notary will request detailed information from all parties involved. This information is either legally required or deemed necessary to fulfill specific obligations related to the transaction. Under Legal Notice 180/2008, the Notary is considered a Subject Person and is legally obligated to ensure that appropriate Customer Due Diligence (CDD) and Anti-Money Laundering (AML) procedures are followed.



The law mandates that Notaries obtain satisfactory proof of the identity of the parties involved, and sometimes of individuals connected to them. This is necessary because certain transactions handled by a Notary could be exploited by criminals seeking to legitimize illicit funds. Consequently, the Notary will request identification as soon as possible during the initial meeting and may make copies of documents for identification purposes. It is important to bring an identification document, such as an identity card, passport, or driver's license. Additionally, the Notary may require proof of your permanent residence, which can be provided through documents like a recent utility bill.



It is highly recommended that all funds transferred to the Notary's designated account be done through personal internet banking, SWIFT transfer, or a Bankers' Draft. The Notary may accept personal cheques at their discretion. In addition, the Notary requires information regarding the source of the funds and may request supporting documentation as necessary. If any portion of the payment is made by a third party (such as a relative, partner, etc.), the Notary is obligated to apply the same due diligence procedures to that individual.



By law, the Notary must maintain a record of all procedures carried out, and as such, will provide specific forms for all parties to complete in order to gather as much information as possible in one go. The Notary may also request further information or documents deemed necessary for the particular transaction. All information and documents gathered during this process are treated with strict confidentiality.

It is important to note that despite any engagement instructions, a Notary reserves the right to decline providing services if the required information and assistance are not satisfactorily provided.



In Subsidiary Legislation 373.01 we find that while notaries are included in the list of professionals who carry out relevant activity, not all their services constitute relevant activities. Those services that fall outside the definition of relevant activity do not trigger AML/CFT obligations.

So what falls under the term 'relevant activity'?



For notaries and other independent legal professionals when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction or by assisting in the planning or carrying out of transactions for their clients concerning the –

- (i) buying and selling of real property or business entities;
- (ii) managing of client money, securities or other assets, unless the activity is undertaken under a licence issued under the provisions of the Investment Services Act;
- (iii) opening or management of bank, savings or securities accounts;
- (iv) organisation of contributions necessary for the creation, operation or management of companies;
- (v) creation, operation or management of companies, trusts, foundations or similar structures, or when acting as a trust or company service provide



Sample of Customer Due Diligence Form – Natural Persons



II

1. Notary Public's Commission Number or Expiration and Renewal Information

My Commission Expires:

My Commission Number:

My Renewal Date:

III

2. Notary Public's Business Name or Location and Contact Information

My Business Name:

My Business Address:

My Business Phone:

My Business Email:

IV

3. Notary Public's Business Name or Location and Contact Information

My Business Name:

My Business Address:

My Business Phone:

My Business Email:



QUESTION 1

Which of the following is NOT a requirement for a notary public in the state of Florida?

A. Be a resident of the state of Florida

B. Be at least 18 years old

C. Be a citizen of the United States

D. Be a member of the Florida Bar

ANSWER: D

QUESTION 2

Which of the following is NOT a duty of a notary public in the state of Florida?

A. To maintain a record of all notarial acts performed

B. To keep a record of all notarial fees collected

C. To keep a record of all notarial commissions received

D. To keep a record of all notarial oaths administered

ANSWER: C

QUESTION 3

Which of the following is NOT a requirement for a notary public in the state of Florida?

A. Be a resident of the state of Florida

B. Be at least 18 years old

C. Be a citizen of the United States

D. Be a member of the Florida Bar

ANSWER: D



Sample of Customer Due Diligence Form – Legal Persons



Form 1

Section 1

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

Section 2

DATE: _____

TIME: _____

Section 3

STATE: _____

Section 4

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

Section 5

DATE: _____

TIME: _____

Section 6

STATE: _____

Section 7

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

Section 8

DATE: _____

TIME: _____

Section 9

STATE: _____



Section 1: Personal Information

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____
Email: _____

Section 2: Applicant Information

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____
Email: _____
Education: _____
Experience: _____
References: _____

Section 3: Employer Information

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____
Email: _____
Position: _____
Start Date: _____
End Date: _____

Section 4: Applicant Information

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____
Email: _____
Education: _____
Experience: _____
References: _____

Section 5: Employer Information

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____
Email: _____
Position: _____
Start Date: _____
End Date: _____



III

1. Name of the person being notarized:
2. Address:
3. City:
4. State:
5. Zip:

6. Date:
7. Time:
8. Signature:

9. Notary Public Name: _____

10. Notary Public Commission Expires: _____

IV

11. I, the undersigned, do hereby certify that the foregoing is a true and correct copy of the original document presented to me for notarization.

V

12. I, the undersigned, do hereby certify that the foregoing is a true and correct copy of the original document presented to me for notarization.

13. My Name:
14. My Address:
15. My City:
16. My State:
17. My Zip:

18. My Commission Expires:
19. My Signature:

20. _____

21. _____

22. _____

23. _____

VI

13. I, the undersigned, do hereby certify that the foregoing is a true and correct copy of the original document presented to me for notarization.

14. I, the undersigned, do hereby certify that the foregoing is a true and correct copy of the original document presented to me for notarization.

15. My Name:

16. My Address:

17. My City:

18. My State:

19. My Zip:

20. _____

21. _____

22. _____



Section 1

1. The notary public is a public officer who is authorized to perform certain legal duties.

2. The notary public is a public officer who is authorized to perform certain legal duties.

3. The notary public is a public officer who is authorized to perform certain legal duties.

4. The notary public is a public officer who is authorized to perform certain legal duties.

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6. The notary public is a public officer who is authorized to perform certain legal duties.

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Section 2

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Power of Attorney – Prokura

The power of attorney (mandate), in Maltese ‘prokura’, is a legal instrument by virtue of which a person authorises another person to carry out certain acts on his behalf.

A power of attorney may either be general which means that the mandatory is authorised to carry out any act in the name and on behalf of the mandator, or special which means that the mandatory will only be able to carry out any one or more acts on behalf of the mandator as expressly stipulated in the power of attorney.



In order to grant a power of attorney, a series of conditions need to be respected.

1. Both the person granting the power of attorney (mandator) and the agent must be at least 18 years old
2. The mandator must have full mental capacity in order for the Maltese power of attorney to be valid
3. Both the mandator and the agent need to present their identification for the power of attorney to be drafted and authenticated by a Notary
4. The Notary must draw up the power of attorney

Setting up a power of attorney does not involve the transfer of ownership of the mandator's assets onto the agent.



How is a Power of Attorney Terminated?

A Power of Attorney (POA) will remain valid until it is revoked by the principal (mandator) or otherwise terminated. The revocation can be done unilaterally and does not require the Notary's involvement, allowing the principal to cancel the POA at any time if trust is lost.

An electronic registration system is available for individuals (not companies) to terminate both general and special POAs, particularly those related to immovable property. This system enables individuals to submit a form to the Office of Notary to the Government, which replaces the previous complex procedure of notifying all registered notaries and commercial banks in Malta and Gozo through a judicial letter.

The revocation is to be made at the Office of the Notary to Government by filling the applicable form:

- RPG – Revocation of General Power of Attorney
- RPS – Revocation of Special Power of Attorney

This is done against the payment of €50.

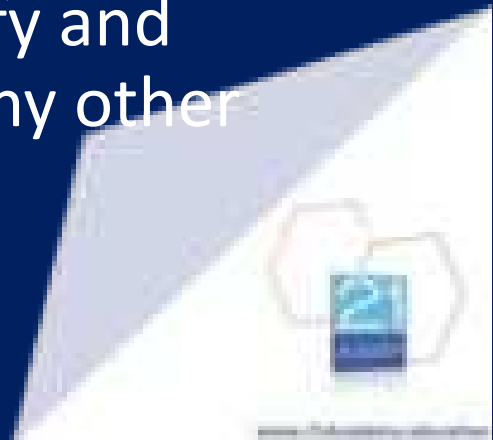


Code of Conduct

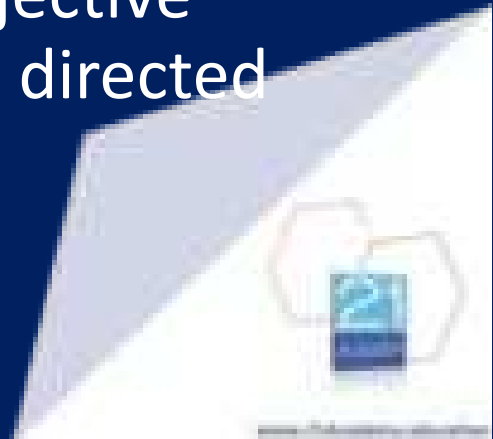
- The Code of Ethics outlines that, in their interactions with other notaries and colleagues, the Notary and their employees must adhere to principles of loyalty, respect, fairness, generosity, solidarity, and cooperation. They are expected to work towards enhancing the prestige and public importance of the profession. Any display of arrogance or disloyal competition should be strictly avoided.



- A notary is required to provide copies of notarial deeds and documents to colleagues upon request, within a reasonable time frame. Ideally, this should be done within ten (10) working days from the date of the request. This time limit particularly applies to notarial deeds that have not been deposited at the Notarial Archives.
- In cases where a colleague is unable to receive certain acts due to a serious impediment or illness, the notary is obligated to step in and take over. In such situations, the notary is authorized to verify and confirm the intentions of the parties involved and address any other relevant matters as deemed necessary.



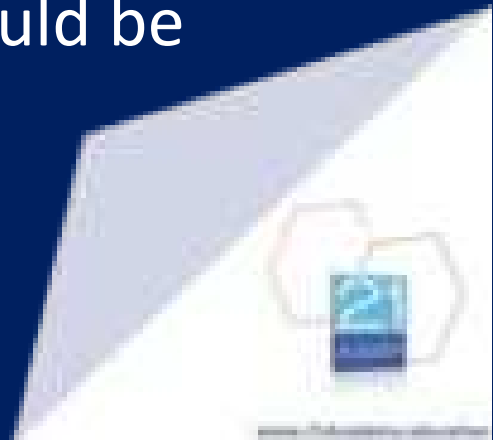
- A notary must avoid voicing critical opinions about their colleagues in the presence of third parties, including other colleagues, clients, state authorities, or institutions, as this could damage the reputation of the profession or tarnish the standing of a specific colleague by undermining their competence, expertise, or service. However, a notary may provide objective technical advice regarding a colleague's work if the method or procedure used by that colleague is legally incorrect. In such instances, the notary must maintain an objective and professional tone, refraining from any personal criticism directed at the colleague.



- A notary must notify their colleague, in a professional and respectful manner, of any errors or omissions they believe their colleague has made.
- A notary should make every effort to correct any mistakes, inaccuracies, or other omissions in their work within a reasonable timeframe when requested by a colleague. This applies even in situations where it is legally permissible for another notary to make such corrections, but where it would be more practical for the original notary to address the issue, particularly because they already have a professional relationship with the parties whose signatures are involved.



- A notary is obligated to share his structured perspectives and information with colleagues. When approached by a colleague for advice, the notary must provide his opinion and recommendations within a reasonable time frame, taking into account the urgency of the matter.
- In situations where a notary is collaborating with another notary or a different professional, they must preserve their professional independence and refrain from performing any task that would be unethical or contrary to professional standards.



- A notary is prohibited from working with another notary whose warrant has been revoked or temporarily suspended. This includes signing notarial deeds or any other documents prepared by that notary, or providing any services in collaboration with them.
- A notary must avoid attempting to hire employees who are already working for a colleague. Furthermore, if a notary intends to employ someone who was previously employed by another notary, they are required to inform their colleague of this intention.



- In dealing with public authorities and institutions, the notary must carry out their responsibilities professionally, ensuring that their conduct reflects positively on the notarial profession.
- A notary must not attempt to employ or seek collaboration with civil servants in exchange for any form of payment or compensation. If a dispute arises, a notary should not take independent action against public authorities or institutions without first consulting the Notarial Council.



- In carrying out his duties to clients, the notary must act with care and professionalism. He should ensure reasonable availability to his clients and maintain a high level of efficiency throughout the entire notary-client relationship, particularly by keeping clients well-informed and up to date.
- A notary should provide all the necessary information the client requires and support them in making a fully informed decision.



- As a public official, rather than just an independent professional, a notary cannot stop representing a client unless there is a valid reason. Such reasons may include a breakdown of trust between the notary and the client, a conflict of interest, a situation that compromises the notary's professional independence, being asked by the client to engage in illegal, unethical, or fraudulent actions, or when a client refuses to pay for services rendered.



- A notary is obligated to provide legal education to trainee notaries and ensure they gain sufficient notarial experience in accordance with the law. This includes introducing trainee notaries to the core principles of the profession and the ethical standards that govern it.
- The notary must actively engage trainee notaries in all aspects of the notarial profession, helping them develop the skills and knowledge necessary to carry out the duties and responsibilities of the profession effectively.



A notary is responsible for ensuring that their staff is properly trained and equipped to carry out their tasks professionally. Additionally, as a general practice, a notary should avoid allowing their trainee notaries or employees to serve as representatives in notarial acts handled by them, in order to uphold the essential principle of impartiality.





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