

Notarial Duties and Functions

Introduction to the Office of the Notary Public



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

Lecture 1

Introduction to the Office of the Notary Public



Laws of Direct Relevance:

- Chapter 55: Notarial Profession and Notarial Archives Act (**NPNA**)
- Chapter 56: Public Registry Act (**PRA**)
- Chapter 296: Land Registry Act (**LRA**)
- Chapter 12: Code of Organisation and Civil Procedure (**COC**P)
- Chapter 16: Civil Code (**CC**)



The History of the Notary

- In Malta, we have a very ancient history of the office of the Notary
- The earliest available records of a Notary Public in Malta dates back to the year 1440
- The first deeds published by Maltese Notaries were by
 - Not. Paolo Bonello 1467 -1517
 - Not. Giacomo Zabbara 1471 – 1500



Who is the Notary?

Article 2, NPNA

“Notaries are public officers. They are charged to receive acts inter vivos and wills, and to attribute public faith thereto; they shall be responsible for their custody and shall give out copies and extracts of or from such acts or wills.”



Functions of the Notary:

- ✓ Public Officer
- ✓ Receives acts (Inter Vivos / Wills)
- ✓ Attributes Public Faith
- ✓ Custody of Acts
- ✓ Authenticates Copies and Extracts



Functions of the Notary:

- ✓ Fiscal Obligations
- ✓ Liberal Professional
- ✓ Draft Private Writings
- ✓ Examine Title



Role of the Notary

Public Officer:

Article 92, Criminal Code, Chapter 9, Laws of Malta

*The general expression “**public officer**”, includes not only the constituted authorities, civil and military, but **also** all such persons as are lawfully appointed to administer any part of the **executive power** of the Government, or to perform any other **public service imposed by law**, whether it be judicial, administrative or mixed*



Article 5, NPNA: Appointment of Notary

*(1) Notaries are appointed **for life** by the President of Malta by a Notice published in the Government Gazette, and may exercise their functions in **any part** of Malta.*

*(4) Any person who, not being one whose name has appeared in the Gazette in terms of sub-article (1), **assumes the designation** of Notary Public in Malta or in any manner **purports to be entitled to practise the profession** of a Notary Public in Malta shall be guilty of an offence under this Act and shall, on conviction, be liable to a fine (multa) of not less than one thousand euro (€1,000) but not more than five thousand euro (€5,000)...*



Public Faith:

Article 3, NPNA

(1) No person may practise as a notary if:

(a) he holds the warrant of advocate or legal procurator;

(b) he is a bank manager;

(c) he is an estate agent or similar broker;

(d) he is a partner in a commercial partnership or a director or shareholder in a limited liability company whose principal service is estate agency:



Public Faith:

Article 6, NPNA

(1) No person shall be appointed as a notary, unless -

*(a) he is a **citizen** of Malta or of a Member State of the European Union or of a State of the European Economic Area: provided that a State of the European Economic Area means Iceland, the Principality of Liechtenstein and the Kingdom of Norway;*

*(b) he is of **good conduct and good character**;*

*(c) he has obtained the **Doctorate of Laws** from the University of Malta after having followed a course which includes appropriate study-units in notarial studies as prescribed by the relevant statutes, regulations and bye-laws of the University of Malta;*



Article 6, NPNA

(1) No person shall be appointed as a notary, unless –

[...]

(d) he has been a **trainee** at the office of a notary for a continuous period of **not less than two years prior to the date when the qualifying examination is held in terms of article 7 [*subject to Art 103(4) (a)]***

(e) he is fully conversant with **written and spoken Maltese and English**; and

(f) he has **passed the qualifying examination** held in terms of article 7.



Certainty, Impartiality and Independence

Article 12, NPNA: Acts which the Notary may not receive:

- (a) which is **expressly prohibited** by law or manifestly contrary to **good morals** or to **public policy**;*
- (b) if any of the parties thereto is the notary's **spouse** or is **related to the notary** by consanguinity or affinity in the **direct line in any degree** or in the **collateral line up to the third degree** inclusively;*
- c) (i) which, being a **will**, contains any **disposition in favour of the receiving notary**, or any of the **persons** mentioned in paragraph (b), unless such disposition is allowed by law or is contained in a secret will not written by the notary or by any of the persons mentioned in that paragraph, and delivered to him sealed by the testator*



Different types of Notarial Acts:

- Public Deeds
- Wills
- Delivery of Secret Will
- Opening and Publication of Secret Wills
- Protest of Bills of Exchange (Art. 247-250, Cap13)
- Notarial Corrective Act



What is the difference between a Public deed and a Private Writing?

Article 1232 (2), CC:

A public deed is an instrument drawn up or received, with the requisite formalities, by a notary or other public officer lawfully authorized to attribute public faith thereto.

The law does not provide a definition for 'Private Writing', however we can say that a 'private writing' is an instrument drawn up between two or more parties who reciprocally bind themselves towards one another.



Public deed vs Private agreement

Public Deed

- ✓ Public Faith
- ✓ Authenticity
- ✓ Certainty
- ✓ Uniformity
- ✓ Traceability
- ✓ Preventive Justice

Private Agreement

- ✓ No formalities required
- ✓ Any medium can be used
- ✓ Need not mean anything to third parties
- ✓ Need not be dated
- ✓ Use of any language
- ✓ No need for parties to sign simultaneously



Formalities of Notarial Acts

- *Article 25(1), NPNA:*
- *Distinguishes between party and appearer:*

In this Act, "**party**" refers to the person who is a party to the *negotium which is incorporated in the act and, in the case of a will, to the testator*; and "**appearer**" means the person who appears before the notary either as a party or as the representative or agent of a party



Formalities of Notarial Acts

- **Article 25(4), NPNA:**

It is the duty of the notary to direct the drawing up of the act from beginning to end, even when he causes it to be prepared by a person whom he deems trustworthy.

- **Article 25(5), NPNA:**

The notary alone is competent to ascertain the will of the parties and to inquire, after reading over and explaining the act to them, whether it is in accordance with their will.



Formalities of Notarial Acts

- Article 26, NPNA:

The notary must personally be certain of the identity of the appearers, attestors, witnesses and interpreters. Such identity shall be ascertained by the production of the official identity card, passport or other similar official document and, where such document cannot be produced by any of the appearers, on the testimony of two attestors who may also be the witnesses appearing on the act.



Formalities of Notarial Acts

The Notary shall ascertain:

- *The will of the appearers*
- *The capacity of the appearers*
- *The identity of the appearers*



Formalities of Notarial Acts

Article 25(3), NPNA:

The presence of two witnesses shall be required only in the following cases:

- *(a) whenever any of the appearers so requests;*
- *(b) whenever any of the appearers does not know how or*
- *is unable to sign his name;*
- *(c) in the case of public wills; and*
- *(d) in the case of acts of delivery of secret wills.*



Formalities of Notarial Acts

The Role of Witnesses:

- Witness the deed being read and explained to the appearers;
- See the appearers apply their signatures;
- Confirm their testimony by signing the deed and attachments;
- See that the parties are not being unduly influenced



Formalities of Notarial Acts

Qualification of Witnesses:

Article 27(1), NPNA:

*No person shall be competent as witness unless such person has attained the age of **eighteen years**, was **born or is residing in Malta** and has **no interest in the act**.*

Article 27(2), NPNA:

Saving the provisions of article 670 of the Civil Code relating to public wills, the following shall not be competent as witnesses:

- (a) any person who is blind or deaf or dumb;*
- (b) any person who is related to the notary or to any of the parties or appearers, by consanguinity or affinity in any of the degrees mentioned in article 12(b);*
- (c) the spouse of the notary or of any of the parties or appearers;*
- (d) any person who does not know how to or cannot sign*



Formalities of Notarial Acts

*The Forms of Acts:
Article 28(1), NPNA:*

Every notarial act must contain -

*(a) the indication written out in words and in full by the notary himself, of the **day**, the **month** and the **year**, and in the case of a **will**, also the **hour** in which the act is signed;*

(b) the name and surname of the notary



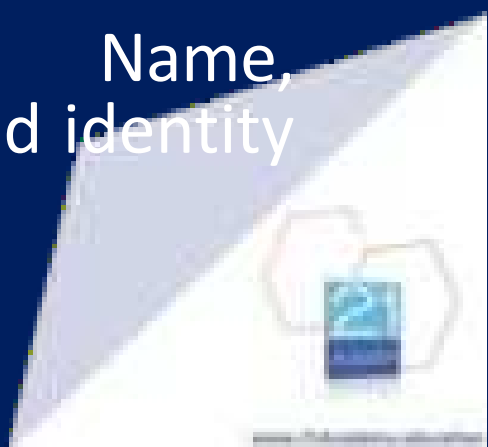
The Forms of Acts: *Article 28(1)(c), NPNA:*

Every notarial act must contain -

- **Parties details:** Name, surname, occupation, father's name, place of birth, date of birth, place of residence and identity card number – if a woman, whether spinster, married or widow.

Those acts which require enrollment only: mother's name and maiden surname.

- **Attestors, witnesses, interpreters and agents details:** Name, surname, place of birth, date of birth, place of residence and identity card number.



The Forms of Acts:
Article 28(1)(d), NPNA:

*Every notarial act must contain -
the indication, written out, at least in the first instance, in
words and in full, of any date, sum of money, amount or
quantity of things forming the subject-matter of the act;*



The Forms of Acts: *Article 28(1)(e), NPNA:*

Every notarial act must contain -

*(i) the **precise description** of the **things** forming the subject-matter of the act in a manner that they cannot be mistaken for others,*

*(ii) in the case of an act inter vivos relating to **immovable property**, such property shall be designated, if urban, by the mention of the city or village and the street wherein it is situated and the street number thereof, or, if it has no number by the mention of at least three of its boundaries; if rural, by the mention of the place within the limits of which it is situate, its denomination, if any, (and possibly the denomination, of the district), its area, and at least three of its boundaries as well as a detailed plan of the property, together with an official survey sheet showing the juxtaposition of the said property in a manner as to establish its identity:*



Practical Example:

If it is an urban property:

Either:

The terraced house with official number fifteen (15), named 'Sunflower' situated in Triq ix-Xemx, Rabat, Malta, with its subsoil and airspace, as free and unencumbered with all its rights and appurtenances.

OR

The house, named 'Sunflower', without official number, situated in Triq ix-Xemx, bounded on the North with the said street, on the East with property of family Gauci and on the west with property of unknown third parties.



If it is a rural property:

“The divided portion of land in the limits of Zebbug, Malta, in the district of ‘Tal-Ghajn il-Kbira’, forming part of the field known as ‘Tas-Sewda’, having a superficial area of approximately one thousand two hundred and thirty-seven point nine eight square metres (1,237.98sq.m.), accessible from Triq Santa Maria, and bound on the West by Triq San Guzepp, on the North by property of the Limited Liability Company AMC Properties Limited and on the South-East by property of Federico Falzon, or his successors in title, or more accurate and varying boundaries, as free and unencumbered and with all its rights and appurtenances, as indicated on the plan and siteplan annexed to the deed published by Notary Doctor Mario Buttigieg on the second day of March of the year nineteen hundred and seventy-seven (02/03/1977).



Signatures

Article 634(2) :

Any signature or mark attested by an advocate, a notary or a legal procurator shall, unless the contrary is proved, be deemed to be genuine if in the attestation it is declared by the advocate or notary or legal procurator that such signature or mark was subscribed or set in his presence and, where the person cannot sign his name, in the presence of two witnesses whose signature appears on the act, and that he has personally ascertained the identity of the persons setting such signature or mark



Article 28(k), NPNA:

*If any of the appearers or any of the attestors does not know how to or cannot sign, he shall declare the cause of such inability or incapacity, and the notary shall **make a mention** of such declaration before the act is signed;*



Cross-marks:

When a person does not know how or cannot sign due to a physical inability:



The image shows a handwritten signature on a piece of aged, yellowish paper. The signature is written in cursive and reads "Geo T Wethermark". A large, bold cross mark is drawn over the "T" and the beginning of the last name "Wethermark".



- “George Walter duly identified by me the undersigned Notary, cross-marked this ex: deed of sale, after due explanation of the contents, import and consequences thereof according to Law, here in Malta, Valletta, Republic Street, number one hundred thirty four (134), in the presence of the under signed competent and qualified witnesses...”



Article 28(k), NPNA:

Signatures:

- At the foot of the act, in the annexes and in the list, of the notary, the appearers, and attestors or interpreters (if required)
- Notary to initial every page
- Immediately after his signature at the foot of the act declare his capacity of Notary Public of Malta in English or in Maltese, either in writing or by means of a stamp or a sealed stamp



Before notary affixes his signature, the document does not become a public deed but remains a private writing.

Some jurists maintain that once all the parties have signed notary is bound to sign the deed.

The actual *negotium* can be concluded before signatures are applied by all the parties.



Article 43, NPNA:

*[...] the execution of an act is not deemed to be complete until the act has been **published and then signed, at the same time**, by the appearers, the attestors, interpreter, witnesses and notary, as the case may be, as provided in article 28(1)(k) and (l).*



Article 28(I), NPNA:

Signatures in Wills:

in the case of a public will contained in several sheets, the signature of the testator, interpreter, witnesses and notary in the margin of each intermediate sheet.

"Intermediate sheet" means every sheet which forms part of the act except that containing the final signatures.

(2) The signature of the witnesses in the intermediate sheets and annexes referred to in this article shall not be necessary if all the appearers are able to sign.



Article 28(1)(g), NPNA:

A mention of the titles and papers annexed to the act:

Any annexe not mentioned in the act or not duly signed, shall not be considered as forming part of the act except in so far as the truth of its contents results from the act itself



When the documents annexed to the act exceed five in number, disregarding for this purpose the copy of the notice filed at the office of the Commissioner of Inland Revenue subsequently to the completion of the act in terms of the Duty on Documents and Transfers Act and the Income Tax Acts or any enactments substituting the same, the notary may make a list thereof, separate from the act, and annex it to the act, making an express reference to such list in the act; in any such case the list shall be signed in the same manner as the act, and the signatures on the annexed documents shall be dispensed with.



The Forms of Acts

Article 28(1)(h), (i), (j), NPNA:

Declarations:

- *Statement that the Notary has duly explained contents*
- *Statement that act is published in presence of witnesses (where required)*
- *Indication of island, city or village and the house or other place where act is published*



Declarations:

- “ Done, read and published, after due explanation to the appearers by me the **undersigned** Notary in terms of law, here in Malta, Valletta, Republic Street, number one hundred and thirty-five (135). ”
- “ Maghmul, moqri u ppubblikat minni Nutar **sottofirmat**, prevja d-debita cerzjorazzjoni skond il-Ligi lill-komparenti, hawn f’Malta, il-Belt Valletta, Triq ir-Repubblika, numru mija u hamsa u tletin (135). ”



Form of the Act

Article 30, NPNA:

*(1) The original of every notarial act shall be **written, typewritten or printed** in dark, clear, easily legible and indelible characters, **without blanks or spaces** unless such blanks or spaces are lined, **without abbreviations, corrections, alterations or additions** in the body of the act and **without erasures**.*

*Every original act shall have **two margins**, one on the right-hand side and the other on the left-hand side. All **annotations and signatures** as are required by law to be made in the margin shall be made in whichever of the said sides is the outer side.*



Article 30, NPNA:

*(2) Where it is necessary to **remove, vary or add any words before the act is signed** by the appearers, the attestors, interpreter and witnesses, the notary shall make such removal, variation or addition by means of a **numbered mark** in the place where such removal, variation or addition is to be made and **a note at the end of the act, but before the final signatures, numbered so as to correspond to the relative mark**; and in any such case, the notary shall cancel the words which it is desired to remove or vary, in such manner as to **leave the words cancelled still legible**, and the note at the end of the act shall state the **number of words so cancelled** or, as the case may be, that other words are **substituted for those cancelled**, and containing immediately after, the words so substituted.*



Article 30, NPNA:

(3) In the case of a mere **addition of** words, the notary shall make a **numbered mark** in the place where the addition is to be made and a **note at the end of the act, but before the final signatures, numbered so as to correspond to the relative mark**, and containing the expression "**words added**", "**adde**" or other similar expression and, immediately after, the words to be added.

(4) Any cancellation, addition or variation made otherwise than in the manner aforesaid shall be considered **as if it had not been made**.



Article 44, NPNA:

It shall not be lawful to make any alteration in the act after it has been published and signed, as provided in the last preceding article.



Any Questions?

Thank you for your attention



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