

# Notarial Duties and Functions

Maintenance of acts and interactions with the various stakeholders

Lecturer: Avv. Maria Ruth Ciantar

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Undergraduate Certificate in Notarial  
Law Fundamentals for Office Assistants

# Lecture 6

## Maintenance of acts and interactions with the various stakeholders



# Maintenance of Acts



# Definition of Notarial Acts.

- Notarial acts are legal documents executed by notaries public that have been granted the authority to perform specific legal functions. These acts include:
  - Deeds of transfer of property
  - Wills
  - Powers of attorney
  - Contracts
  - Acknowledgments and affidavits



# The maintenance of notarial acts.

- The maintenance of notarial acts in Malta is a structured process governed by specific legal frameworks that emphasize record keeping, accessibility, compliance, and ethical conduct.
- By adhering to these regulations, notaries ensure the integrity and reliability of the notarial acts they perform, which is vital for legal and property transactions in the country.



# Organise the custody and maintenance of acts *inter vivos* and wills.

- Any notary to whom the Court of Revision of Notarial Acts entrusts the custody of the deeds and registers of any deceased notary or of any notary who has ceased to exercise his functions in any of the cases laid down in this Act, for the purpose of taking due care thereof, of allowing them to be inspected and read, and of giving out copies and extracts of or from the same as provided in Chapter 55 of the Laws of Malta or issue the declaration in terms of the proviso to article 68(2) of the same Chapter, is said to be a keeper of notarial acts.

# Notarial Keepers. Who are they ?

- In Malta, *notarial keepers* (or *depositories*) are responsible for the safekeeping of the archives and deeds of deceased or retired notaries.
- Their role is regulated under Maltese law (Chapter 55 of the Laws of Malta) and is crucial for maintaining the integrity and accessibility of notarial records.

# The appointment of a notary keeper.

- The appointment of a notary keeper shall not imply that the keeper is responsible for the payment:
- (a) of any registry fees, duty, tax, impost or penalty due by or which could have been imposed on the receiving notary in terms of past or current fiscal legislation, or any other law, unless and until such time as the keeper is put in funds to be able to pay same; or
- (b) of any disciplinary punishment awarded or that could have been awarded to the receiving notary for any breach by him of this or any other law.



# How does the system work?

1. Notarial Archives: When a notary passes away or retires, all the deeds and registers from that notary must be transferred to the Notarial Archives. This is to ensure that all documents remain accessible and secure.
  2. Chief Notary to Government: The Chief Notary to the Government is responsible for the safekeeping of deeds created by public notaries who are no longer in practice. The Chief Notary also oversees the Notarial Archives and is responsible for the registration and preservation of public deeds.
  3. The Notarial Council: The Council ensures that the notarial profession operates according to legal requirements and standards. They are responsible for appointing notarial keepers to take charge of deeds when necessary.
  4. Notarial Keepers (Depositarii): These are designated notaries appointed by the court or the Notarial Council to assume the responsibility of holding and preserving the notarial acts and registers of deceased or retired notaries.
- Notarial keepers play an important role in maintaining the continuity of legal records and ensuring that documents are preserved correctly according to Maltese law.

# Notary Delegate.

- A notary delegate is an individual, usually another notary, appointed to temporarily fulfil the duties of a notary who is unable to carry out their responsibilities due to various reasons like illness, suspension, or an extended absence.
- The delegation of responsibilities allows for continuity and prevents any disruption in notarial services



# Responsibilities of a Notary Delegate.

- **Temporary Management of Notarial Duties:** A notary delegate is responsible for carrying out the daily functions of a notary, which include drafting, authenticating, and preserving legal documents, deeds, contracts, and public records during the period of delegation.
- **Supervision by Notarial Council:** The Notarial Council in Malta oversees the appointment of a notary delegate. They ensure that the delegate is competent and capable of fulfilling the notarial functions according to legal standards.
- **Continuity of Services:** The primary purpose of appointing a delegate is to ensure that legal transactions and the execution of public documents remain uninterrupted, even when the original notary is not available.
- **Time-Bound Role:** A notary delegate's role is usually temporary and limited to the period during which the appointed notary is unable to perform their duties. Once the original notary returns or the reason for the absence is resolved, the delegate's duties cease.

# Formalities of Notarial Acts.

- First important point:
  - The notary **shall not** receive a notarial act except in the presence of the appearers.

BUT

- The presence of two (2) witnesses shall be required only in the following cases:
  - (a) whenever any of the appearers so requests; and
  - (b) whenever any of the appearers does not know how or is unable to sign his name



# Exception to the presence of two witnesses.

- In the case of public wills and in the case of acts of delivery of secret wills, the notary shall in all cases inform and explain to the testator about the testator's right to have two (2) witnesses present.
- In the case of public wills if the testator chooses not to have two (2) witnesses present, the notary shall in the will declare that he has informed and explained to the testator about his right to have two (2) witnesses present and that the testator chose not to have two (2) witnesses present.
- In case of acts of delivery of secret wills if the testator chooses not to have two (2) witnesses present, the notary shall in the act of delivery declare that he has informed and explained to the testator about the testator's right to have two(2) witnesses present and that the testator chose not to have two(2) witnesses present.



# Exemption to the notary.

- Where no witnesses are required where all the appearers on the act declare that they are fully cognizant of the contents of the act and its annexes, they may by an express declaration exempt the notary from reading over the act to them in which case the following formalities are required:
  - a) at the foot of the act and before the final signatures, the notary records both declarations in his own handwriting and signs what he has recorded.
  - (b) immediately following the notary's signature, each appearer separately writes in his own handwriting "I confirm this exemption" to which he affixes his signature, and
  - (c) all the appearers sign every sheet of the act in the outer margin and every annexe, unless the annexes have already been signed in terms of Chapter 55.

# A notarial act is null:

- A notarial act is null:
- (a) if it has been received by a notary before his name has appeared in the Gazette;
- (b) if it has been received by a notary who has ceased to exercise his functions, or who has been suspended or incapacitated and after such cessation, suspension or incapacitation has been published in the Gazette;
- (c) if it is undated;
- (d) if it has been received in contravention of any of the provisions of a number of subarticles of article 12 dealing with Acts which notary may not receive.
- PS: Again this comes up with a number of provisions which the law lists



# A notarial act is annulable :

- (a) if it has been received in contravention of any of a number of provisions of article 12;
- (b) if the requirements of articles 36 (Interpretation of notarial act into another language), 37 (Procedure when one of the parties is deaf), and 38 (Interpretation of notarial act into another language) have not been complied with;
- (c) if the requirements of article 25(6) (Receiving and drawing up of acts) have not been complied with;
- (d) if the notary has not read the act to the appearers, saving the provisions of article 25(6) (Receiving and drawing up of acts.);
- (e) if the notary has not explained the act to the appearers;
- (f) if the notary has not read and explained the act to the appearers in the presence of the witnesses, when the presence of witnesses is required.

# When to file a note at the Public Registry.

- Every notary must, within fifteen working days from the date of the act deliver to the Director of the Public Registry a note of –
- (a) any act inter vivos transferring the ownership of immovable property or other real rights over such property;
- (b) any act inter vivos creating or varying any praedial easement (servitude) or any right of usufruct, use or habitation relating to immovable property, or containing any renunciation of such easement (legal right granted to a person or entity to use or access another person's land for a specific purpose) or right;
- (c) any act of emphyteusis or sub-emphyteusis or of reduction or redemption of ground-rent, or of renunciation or rescission relating thereto;
- (d) any public will or any publication of a secret will;
- (e) any public deed of cohabitation;
- (f) any marriage contract, settlement of dowry, variation of or counter-declaration respecting any marriage contract, separation of property between spouses, or cessation of the community of acquests;
- (g) any act creating an annuity, in perpetuity or for a time as a real burden on immovable property and any act notifying the termination thereof;



# When to file a note at the Public Registry cont'd.

- (h) any act imposing any burden, in perpetuity or for a time, on immovable property;
- (i) any act of compromise affecting immovable property or real rights over such property;
- (j) any act of partition of immovables or any declaration affecting the ownership of immovables or any rights over immovables;
- (k) any act of assignment of hereditary rights;
- (l) any act of renunciation made by any person on taking religious vows;
- (m) subject to the provisions of sub-article (9), any act whereby a foundation is established or terminated and any act whereby a new endowment (financial investment or fund donated to an institution or organization, typically to provide ongoing income or financial support), other than an endowment under a scheme which is registered under the Second Schedule of the Civil Code, is granted to a foundation;
- (n) any notarial corrective act, any subsequent corrective act and any act of rebuttal in terms of article 45A (Notarial corrective act)
- (o) any act to renounce to an inheritance;
- (p) any application for a European Certificate of Succession and every issued European Certificate of Succession.

# Ensuring the proper storage, security, and accessibility of acts as required by legal regulations.

- Every notary must with all due care and diligence keep in a safe place the acts received by him with the relative annexes until he shall have deposited the same in the Archives
- The notary shall bind in volumes, in **chronological** order, all the acts received by him in the course of a year, affixing on the margin of each act a **progressive** number; each annexe shall have a distinguishing alphabetical letter.
- All the written pages of the said acts received in the course of a year and of the annexes thereto shall bear a progressive number.
- Where any of the written pages or annexes **bears a similar progressive number**, the notary shall either **rectify** the error and initial the correction or **add** to the page number a **distinguishing alphabetical letter which he shall initial**. In the latter case, he shall at the end of the volume **make a signed declaration** referring to the pages where such letters have been added and shall state that he has done so to avoid duplication in the volume's pagination.



# Registers.

- Every notary is the owner of the registers of the acts received by him and of their respective indexes.
- He may dispose of the said registers and respective indexes as a whole in favour of any person by a public deed or by will.
- The original acts, registers and indexes, shall not be subject to any precautionary or executive warrant and may not be sold by judicial auction.



# Indexes.

- Every notary must keep two alphabetical indexes, one of the deeds *inter vivos*, and the other of wills.
- This applies both as regards the original acts received during the year and as regards the registers of such acts.
- The said indexes shall be formed in the alphabetical order of the surnames of the parties, and every act shall be entered under the surname of each of the parties thereto.
- Such indexes shall contain the name and surname of each of the parties, the nature of the act, the progressive number thereof.



# Registration of acts

- The notary must register each act within three months from the date of the publication thereof
- He must also register the annexes thereto even when in the act it is stated that the same area annexed for preservation only.
- The registration is made by transcribing the act and annexes on other pages, with the number and title of the act, and with the references mentioned in the law, placing in their proper places all the words of the act without distinguishing any variation made therein or reproducing the words cancelled.



# Alienation of registers and indexes.

- Any notary alienating (transferring legal ownership or rights) his registers and respective indexes must, within ten days, give notice of such alienation to the Registrar of the Court of Revision.
- In any such case, such notary shall remain responsible for the safe keeping of the acts and registers until such time as, on his demand or on the demand of the alienee the said court shall have appointed as keeper thereof the alienee himself, if he is a notary, or otherwise, another notary proposed by the alienee and accepted by the said court.



# Public Wills.

- Public wills, however, shall be bound in separate volumes, and those received in the course of a year shall likewise bear in the margin of each a progressive number, and all their written pages and annexes shall also bear a progressive number.
- The volumes of public wills shall be kept separate from the other volumes, and under lock and key.
- Both in the minute-book and in the register, a blank leaf cancelled on either side by two transversal lines must be left between the end of one public will and the beginning of another.
- Both wills and acts inter vivos shall be numbered within twenty-four hours of the execution thereof.
- The numbering of the written pages and annexes, if any, shall be made within twenty-four hours of the execution of a will, and within thirty days in the case of any other act.



# Registers of Public Wills.

- The registers of public wills received by the notary during a year shall be kept separate from the registers of the acts *inter vivos* received during the same year, and shall be bound in separate volumes.
- The said registers shall be numbered within one month from the last day of the time prescribed for the registration.
- Such numbering shall begin, both for the registers of wills and for the registers of acts *inter vivos*, from the first page of the respective first act and shall continue to the last page of the last act received during the year.



# Binding.

- The notary may, handover to a binder the original acts and wills, their annexes, indexes and registers to be bound as required by this Act.
- Provided that the notary shall at no moment release contemporaneously from his possession the originals and their respective registers.



# Notary's responsibility for loss.

- The notary must preserve and take care of the registers and indexes, during his lifetime, with the same diligence as the original acts.
- The notary shall be responsible for any loss, cancellation, erasure or other injury which, through his fault, may occur in the original acts, annexes, registers or indexes while in his possession.
- The binder who has in his possession the originals, their annexes, indexes and registers shall, during such time, be subject to the same civil and criminal responsibility as the notary.
- The notary's civil and criminal responsibility in case of disclosure to third parties of confidential information resulting from the originals, their annexes, indexes and registers shall extend to the binder.



# Interactions with the various stakeholders



# Design and create effective communication strategies.

- Creating effective communication strategies in a notarial field is crucial to building client trust, ensuring clarity, and maintaining professionalism.
- In a notarial context, communication strategies should focus on conveying complex legal concepts in simple language, managing client expectations, and maintaining transparency and confidentiality.



# Understanding the Target Audience.

- Clients: Generally, clients approach notaries for critical legal documents such as wills, contracts, real estate transactions, and power of attorney.
- Other Stakeholders: Financial institutions, legal professionals, government entities, and regulatory bodies may also interact with notaries regularly.



# Clear and Concise Communication.

- **Simplify Legal Terminology:** Explain legal documents and procedures in plain language to clients, avoiding jargon whenever possible. Create simple explanations or glossaries that can be shared with clients to help them understand terms.
- **Visual Aids:** Utilize diagrams or flowcharts to outline legal processes (e.g., the steps in property conveyance or will preparation). This helps clients visualize the steps and understand their roles and responsibilities.



# Professionalism and Empathy.

- **Personalized Interaction:** Tailor your approach based on client needs, showing empathy during sensitive cases like wills or estates. Make sure your tone remains respectful, patient, and understanding.
- **Prompt Response:** Set up an internal response time policy (e.g., respond to emails within 24 hours) to show professionalism and attentiveness.



# Transparent and Structured Communication.

- Initial Consultation: Clearly outline services, fees, expected timelines, and legal obligations during the initial consultation. Providing a checklist or flowchart of the notarial process can help clients understand what to expect.
- Regular Updates: Keep clients informed of key milestones or developments, such as document registration, approvals, or court submissions.



# Use of Technology.

- Client Portals: Set up secure client portals where clients can track the progress of their cases, access important documents, or upload files.
- Electronic Signatures and Online Appointments: Implement electronic signature solutions to streamline document execution. Offer online appointment scheduling to increase convenience for clients.



# Documentation and Follow-up.

- **Written Summaries:** After meetings, provide a brief written summary or action list to clients to ensure that they are clear about the next steps.
- **Feedback and Improvement:** Establish a client feedback mechanism to identify areas of improvement in your services. Use surveys or one-on-one follow-ups.



# Crisis Communication Plan.

- Addressing Issues: In cases of errors or unexpected changes, quickly address the issue with the client, explain what went wrong, and outline the steps being taken to resolve it.
- Confidentiality: Clearly communicate to clients the measures taken to protect their personal and sensitive information. Be explicit about privacy policies.



# Summary on Communication.

- An effective communication strategy for a notarial firm involves clarity, transparency, professionalism, and empathy.
- It should focus on simplifying legal jargon, maintaining regular client contact, embracing digital tools, and creating educational resources to position your firm as a knowledgeable and client-oriented entity.
- Implementing these strategies fosters better client relationships, reduces misunderstandings, and enhances your firm's reputation in the notarial field.



# Summary of Strategies

- Listen Actively and engage with empathy.
- Speak Clearly and Concisely, and avoid jargon.
- Use Non-Verbal Cues appropriately to reinforce your message.
- Tailor Communication to the audience and context.
- Seek and Give Constructive Feedback to continuously improve.
- Build Authentic Relationships through honesty and transparency.
- Improving communication is a dynamic process that involves self-awareness, adaptability, and a genuine commitment to understanding and connecting with others. By refining these strategies, you can enhance both your professional and personal relationships.



Organise and manage the theoretical and practical knowledge gained from the study unit to effectively contribute to the reception, custody, and attribution of public faith to acts *inter vivos* and wills in a notarial office setting.

- In the context of Malta, organizing and managing both the theoretical and practical knowledge gained from a study unit related to notarial practice is crucial for effectively handling the reception, custody, and attribution of public faith to acts *inter vivos* (legal acts between living persons) and wills in a notarial office.

# Understanding the Role of Public Faith in Malta.

- Public faith (*fides publica*) refers to the legal trust and authenticity bestowed upon documents or acts authenticated by a notary. In Malta, notaries act as impartial officers of the law, and their primary responsibility is to ensure the validity and enforceability of acts *inter vivos* and wills.
- The role of public faith in the notary profession is foundational and pivotal, as it underpins the trust and legal authority associated with their work.
- Core Responsibilities of a Notary
  - The notary's responsibility is to act as an impartial public official who ensures the legality and authenticity of specific acts. Their tasks often include:
  - Authenticating signatures to confirm the identity of parties and their willingness to engage in legal transactions.
  - Certifying documents such as contracts, deeds, and affidavits to give them legal credibility.
  - Recording and archiving acts for future reference.
  - By performing these tasks, notaries provide legal security and trust to individuals, businesses, and governments.



# Presumption of Authenticity

- Public faith granted to notaries allows documents they authenticate to be accepted as evidence in courts or administrative processes without further proof of their validity. This legal presumption reduces disputes and enhances efficiency in legal and commercial transactions.
- Impartiality and Trust and Public Faith Across Legal Systems
  - Notaries are bound by strict ethical standards to remain neutral and ensure fairness. This impartiality is crucial to upholding public faith, as their role is to serve the public without favoring any party involved in a transaction.
  - Civil Law Jurisdictions: Public faith is central to the notary's role, with significant responsibilities in preparing, authenticating, and preserving documents. For example, in Malta, notaries are empowered by law to carry out duties with a high level of public trust.
  - Common Law Jurisdictions: Notaries perform similar functions but with more limited authority compared to their counterparts in civil law systems. Public faith remains essential but is often less expansive in scope.



## 6. Safeguarding Public Faith.

- To protect the integrity of public faith, notaries must:
- Adhere to rigorous training and certification requirements.
- Maintain meticulous records to prevent fraud or errors.
- Be subject to oversight by professional bodies or government agencies.
- Challenges to Public Faith
  - Technological Evolution: With the rise of digital notarization and electronic documents, ensuring the same level of public trust poses challenges that require updated regulations and secure platforms.
  - Fraud and Misuse: Cases of forged notarized documents or unethical behavior by notaries can undermine public trust, necessitating stricter enforcement of standards.



# Legal Foundations

- Acts Inter Vivos:
  - These include contracts, deeds of sale, donations, and marriage settlements.
  - Understanding Maltese Civil Code provisions (e.g., transfer of property, obligations, and contract law) is essential.
- Wills:
  - Knowledge of the requirements for drafting, executing, and preserving wills under Maltese inheritance laws.

# Procedural Knowledge.

- Reception of Documents:
  - A notary must ensure all parties involved in the transaction are legally competent and understand the implications of their actions.
  - Conduct due diligence by verifying identities, legal capacity, and property ownership.
- Custody and Preservation:
  - Securely store original notarial acts, which are considered public records.
  - Comply with the Notarial Profession and Notarial Archives Act regarding the safekeeping of documents.
- Attribution of Public Faith:
  - Certify the authenticity of the act, signatures, and legal intentions of the parties.
  - Guarantee the act's enforceability by ensuring compliance with all legal requirements.



# Contribution to Acts Inter Vivos

- A. Ensuring Legal Certainty
  - Verify that all legal requirements are met to make the act legally binding and enforceable.
  - Prevent disputes by ensuring clarity and mutual consent between parties.
- B. Authenticating Transactions
  - Attribute public faith to property transactions, donations, and other legal agreements by certifying their authenticity and legality.
  - Provide impartial oversight to safeguard the interests of all parties.



# Contribution to Wills

- A. Drafting and Execution
  - Assist clients in drafting wills that clearly reflect their wishes and comply with legal requirements.
  - Ensure the will is executed properly, with witnesses present, and signatures authenticated.
- B. Custody and Registration
  - Store original wills securely to prevent loss or tampering.
  - Register wills in the Public Registry or the Notarial Archives to ensure they can be retrieved upon the testator's death.
- C. Probate (the legal process through which a deceased person's will is validated and their estate is administered) and Distribution
  - Facilitate the probate process by providing legally valid wills to the courts and beneficiaries.
  - Advise executors or heirs on the distribution of the estate based on the terms of the will.



# Other procedures

- 1. Filing the Will with the Court
- The probate process typically begins with the submission of the deceased person's will to the probate court. If no will exists, the estate is considered "intestate," and the court will appoint an administrator to handle the estate.
- 2. Appointment of the Executor or Administrator
- If there is a will, the named executor (the person designated in the will to carry out its terms) is appointed by the court to oversee the probate process. If there is no will, the court appoints an administrator, usually a family member, to manage the estate.
- 3. Inventory of the Estate
- The executor or administrator must take inventory of the deceased person's assets, such as property, bank accounts, investments, personal belongings, etc. This inventory is submitted to the probate court.



# Other procedures cont'd

- 4. Paying Debts and Taxes
  - Before distributing the estate to beneficiaries, the executor or administrator must settle any outstanding debts and taxes owed by the estate. This can include:
    - Funeral expenses
    - Medical bills
    - Credit card debt
    - Estate taxes
- 5. Distributing the Assets
  - Once debts and taxes are settled, the remaining assets are distributed to the beneficiaries according to the terms of the will. If there is no will, the assets are distributed according to state or national laws governing intestacy.
- 6. Closing the Estate
  - Once all assets have been distributed and all legal and financial matters have been settled, the probate process concludes, and the estate is officially closed.





# Questions ???



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