The Court of Revision of Notarial Acts

Procedures at the Office of the Notary
- The Notarial Council

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Undergraduate Certificate in Notarial Law Fundamentals for Office Assistants

Learning Outcomes

- How to demonstrate a clear understanding the necessary procedures required to be followed.
- How to Plan and manage the communication with relevant stakeholders.
- The navigating the procedures for submitting acts for revision, demonstrating effective interpersonal skills and professionalism.
- The importance of Notaries acting towards their colleagues.
- The role of the Notarial Council.

Procedures when it comes to wills – Acts of delivery of secret wills

- The acts of delivery of secret wills shall be written on the back of the paper on which the will itself is written or on that which serves as its envelope.

- The testator may at any time withdraw his secret will from the notary to whom he shall have delivered it, if the will is still with such notary, or from the registry in which it shall have been deposited.

Opening and publication of secret wills

- Secret wills shall be opened and published in accordance with the procedure laid down in article 534 of the Code of Organization and Civil Procedure.
- The notary who publishes a secret will shall keep a record of such publication and shall preserve and register such record as in the case of an *inter vivos* act.

Opening of will in terms of article 534 of the COCP

- The will shall be opened by the registrar in the presence of the judge, at the time and place appointed by the decree of the court, after the signatures affixed by the judge and the registrar at the foot of the note of the particulars mentioned in article 530, shall have been verified.
- After the will is opened, it shall be published in the presence of the judge and the registrar, by the notary who had presented it or, if such notary is dead or absent, or is prevented from attending on account of sickness or for any other reason, or if the will had been presented by the testator himself, by a notary to be selected by the party who made the application for the opening of the will.

Article 530 of the COCP- The Note of particulars

- The note of particulars shall be signed by the registrar, and countersigned by the testator or notary who shall have presented the will, and by the judge; and the registrar shall, within **twenty-four hours**, register such particulars in a book to be kept by him for the purpose.
- If the testator declares that he is unable to write, a mention of such declaration shall take the place of his signature.
- A copy of the said book shall be kept by the judge who shall, at least once every quarter, compare the registered particulars with the wills which, according to such book, must be in the custody of the registrar.

Wills are to be endorsed with the act of delivery

- The judge shall not allow the registrar to receive from any notary any secret will, unless it is endorsed with the act of the delivery made by the testator to the notary.
- Nor shall the judge allow the receipt of any will endorsed as aforesaid, unless such endorsement contains the declaration required by law to the effect that the paper delivered to the notary contains the will of the person from whom the notary has received such paper.

Withdrawal of a will

- A secret will may not be withdrawn before the time comes for its opening, except by the testator himself or by an attorney specially authorized for the purpose.
- The testator or attorney withdrawing the will shall sign in the presence of the judge, in the margin or at the foot of the entry in the book referred in Article 530 of the COCP (already quoted) recording the receipt of such will, a declaration that he has withdrawn the will; and such declaration shall also be countersigned by the judge.

Appointment of time for opening and publication of will

- Where a will is to be opened, the court shall by a decree, upon the application of any party interested, appoint the day, time and place for the opening and publication of the will, and order that all interested parties be summoned: those known, by application, and those unknown, by means of banns to be posted up at the entrance of the building in which the court sits and published in the Government Gazette and in a daily newspaper.
- The opening and publication of the will shall **not** take place before the expiration of four days from the date of service of the said application, or of four days from the date of the posting up of the banns and their publication whichever is the later.

Opening of a will

- The will shall be opened by the registrar in the presence of the judge, at the time and place appointed by the decree of the court, after the signatures affixed by the judge and the registrar at the foot of the note of the particulars mentioned in article 530 (already quoted), shall have been verified.

Publication of the will

- After the will is opened, it shall be published in the presence of the judge and the registrar, by the notary who had presented it or, if such notary is dead or absent, or is prevented from attending on account of sickness or for any other reason, or if the will had been presented by the testator himself, by a notary to be selected by the party who made the application for the opening of the will.

Persons incompetent as witnesses in public wills

- In public wills, the heirs, legatees, or their relations by consanguinity or affinity within the degree of uncle or nephew, inclusively, shall not be competent witnesses.

Delivery of will to the notary

- When the will is published as provided in the COCP, it shall be delivered to the notary by whom the publication of the will shall have been made.
- The notary shall, in the presence of the judge, sign a receipt in the book referred to in article 530(already quoted) and such receipt shall be countersigned by the judge.
- Any will delivered in terms of the COCP shall not be deemed to be cancelled from the book referred to in article 530; for the purpose of any document certifying the existence or non-existence of secret wills, and there shall be indicated in any such document, in respect of any such will, the name of the notary who published it and the date of its publication.

Procès-verbal relating to secret wills

- Such procès-verbal shall contain –
- (a) the name and surname of the judge or magistrate and the registrar in whose presence the will is opened and published;
- (b) the name and surname of the notary;
- (c) an indication of the decree ordering the publication;
- (d) a statement that the will has been opened, read and published by the notary in the presence of the said judge or magistrate and the registrar;
- (e) the personal details of the testator;
- (f) a statement of the fact that both the original of the will and the note of the presentation thereof in court as well as the notarial act of delivery, if any, have been annexed to the procès-verbal.

Examination of title

- A notary is empowered to compile documents conducive to establishing both the title to an immovable property and the causes of preference among creditors affecting such title.
- He has the right to interpret the compiled documents and give advice thereon.
- This process of compilation, interpretation and advice is referred to as "the examination of title“ or cognate expressions.
- Without prejudice to his responsibility, the notary shall have the right to delegate any or all of these powers to persons he deems trustworthy

Examination of title … cont'd

- The examination of title shall be carried out in terms of regulations made under this article.
- A notary may examine title whenever he is instructed to do so by a written contract of engagement whose requisites shall be laid down by regulations.
- A notary who publishes a notarial act of transfer of ownership of immovable property or other real rights over such property shall be deemed to have been instructed by the transferee to examine its title:
  - Provided that the transferee may, by an express declaration recorded in the notarial act, exempt the notary from the obligation imposed on him or limit the extent of such obligation in any way the transferee deems fit
  - Provided further that regulations may list the instances where a notary shall be exempt from examining the title, and the notary shall mention in the act that he is so exempt:
  - Provided further that regulations may list the instances where and the conditions under which a notary may refuse to examine title, and the notary shall mention in the act all the relevant details.

Examination of title ... cont'd

- Where a notary publishes a notarial act containing a transaction other than the transfer of ownership of immovable property or other real rights over such property, or where he authenticates a private writing containing a transaction referring to such property, his obligation to examine title shall arise if, and to the extent that, specific regulations are made with regard thereto.
- A notary's responsibility for the examination of title shall be regulated by, and be strictly interpreted according to article 84C of Chapter 55, this article and the regulations made thereto.

Examination of title … cont'd

- Where a notary examines title he shall exercise the diligence
- Where he examines title in terms of the regulations, he shall be deemed to have acted with due diligence;
- Only the following persons may bring an action against a notary in connection with the examination of title which he has carried out:
  - (i) the person with whom he has entered into a contract of engagement
  - (ii) the transferee, or
  - (iii) the persons indicated in regulations which may be made in terms of sub-article (6) of 84C of Chapter 55.
- Where a notary is deemed to have been engaged to examine title by the transferee or has been engaged to examine title by any person, the said Notary may not, without the prior consent of the transferee or person who engaged him, be questioned on any matter in reference to the said examination of title, or on a property title report, or on any communication related thereto, nor may the notary be constrained to produce any document which is not available publicly, or to disclose in any manner a matter or information which may have come to the knowledge of the notary in professional confidence or in his professional capacity.

Examination of title … cont'd

- Where a notary receives instructions in terms of sub-article (4) (notary may examine title whenever he is instructed to do so by a written contract of engagement whose requisites shall be laid down by regulations) or where he is bound to examine title in terms of this article, he shall inform the transferee in any manner, including through verbal communication, of those facts and findings resulting from the searches and those reservations which he is specifically required to mention in terms of the regulations.

Examination of title ... cont'd

- A notary who publishes a notarial act of transfer of ownership of immovable property or other real rights over such property shall be deemed to have been instructed by the transferee to examine its title:
  - Provided that the transferee may, by an express declaration recorded in the notarial act, exempt the notary from the obligation imposed on him or limit the extent of such obligation in any way the transferee deems fit:
  - Provided further that regulations may list the instances where a notary shall be exempt from examining the title, and the notary shall mention in the act that he is so exempt:
  - Provided further that regulations may list the instances where and the conditions under which a notary may refuse to examine title, and the notary shall mention in the act all the relevant details.

Examination of title ... cont'd

- Where a notary publishes a notarial act containing a transaction other than the transfer of ownership of immovable property or other real rights over such property, or where he authenticates a private writing containing a transaction referring to such property, his obligation to examine title shall arise if, and to the extent that, specific regulations are made with regard thereto.

Examination of title … cont'd

- Where a notary receives instructions in terms of sub-article (4) (notary may examine title whenever he is instructed to do so by a written contract of engagement whose requisites shall be laid down by regulations) or where he is bound to examine title, he shall inform the transferee in any manner, including through verbal communication, of those facts and findings resulting from the searches and those reservations which he is specifically required to mention in terms of the regulations
- Unless the transferee has already made a declaration exempting the notary from examining the title, or where the notary records thereto that he is exempt from examining title, or the notary records in the act that he is authorized to refuse to examine title, the notary shall be deemed to have been instructed by the transferee to examine title.

Examination of title … cont'd

- The notary shall be the owner of the documents he compiles for the examination of title and shall preserve them for a period of five years. Such period shall run from the date agreed upon in the contract of engagement or if no such date was agreed upon from the date of the contract of engagement or in default from the date of the deed where the examination was made, and from the date of publication of the act where the examination was made, in the case of a private writing, from the date it is authenticated by the notary.

- An action brought against a notary by the list of persons already mentioned alleging any act or omission of the notary regarding the examination of title shall be barred by the peremptory term of **five years** .

- Nothing shall preclude the notary from being engaged only to compile any of the documents, or to interpret or give advice on such documents which he or a third party has compiled, but this shall not be deemed to be the examination of title.

How to demonstrate a clear understanding the necessary procedures required to be followed

- **Understanding the Key Requirements of Chapter 55**
- A well-versed individual must be able to explain:
- The **responsibilities** of a notary under Maltese law.
- The **legal procedures for submission, revision, and archiving** of notarial acts.
- The **role of the Court of Revision of Notarial Acts** in overseeing compliance.
- The **legal consequences** of non-compliance.

Submission of Notarial Acts

- All acts must be submitted to the **Notarial Archives** within the prescribed timeframe (typically **within six months**).
- The submission includes **original documents**, indices, and registers.
- Failure to meet deadlines results in **disciplinary action**.

Review by the Court of Revision of Notarial Acts

- The Court verifies acts for **accuracy, completeness, and compliance** with legal standards.
- It has the power to request **corrections, impose fines, or take disciplinary action**.
- The process ensures that **no fraudulent or negligent practices occur**.

Archiving and Record-Keeping

- Notaries must maintain **organized and indexed records** of all acts.
- The **Notarial Archives Office** ensures long-term document preservation.
- Audits and **random checks** are conducted to ensure compliance

Execution of Notarial Acts

- Notaries must draft, authenticate, and sign legal documents such as contracts, wills, and property deeds.
- Documents must comply with **formal requirements** (e.g., date, parties' details, legal provisions).
- The notary is responsible for **ensuring legal validity and accuracy**.

How to Plan and manage the communication with relevant stakeholders

- **Identifying Key Stakeholders**
- To ensure smooth notarial operations, communication must be managed with:
  - **Clients** – Individuals and businesses engaging notarial services.
  - **The Notarial Archives Office** – Responsible for storing and managing notarial acts.
  - **The Court of Revision of Notarial Acts** – Oversees compliance and reviews notarial acts.
  - **The Notarial Council** – Regulates notarial practice and provides guidelines.
  - **Government Authorities (e.g., Public Registry, Tax Authorities, Lands Authority)** – For registration and compliance matters.
  - **Legal Representatives & Other Notaries** – For professional collaboration and referrals.

Power of Council to admonish notary

- If on any inquiry, the Notarial Council is satisfied that a notary has been guilty of any such conduct, abuse or negligence, the Council shall have power to admonish such notary and shall report the case to the Attorney General and to the Court of Revision.
- Where within a period of **five years** the Council has admonished a notary three times for such conduct, abuse, negligence or a breach of ethics, he may be suspended from office by the Court of Revision for a period from one to six months upon an application being made to the Court by the President of the Council.

The Notarial Council

- The direction and management of the Notarial College shall be entrusted to a committee called the Notarial Council, elected annually from among the members of the College.
- The names of the members composing the Notarial Council shall be published in the Gazette.
- The Notarial Council shall communicate with the Government and the Government with the Council on all matters affecting the profession or connected therewith.
- The Notarial Council shall, of its own motion or on the complaint of any person, inquire into the professional conduct of any notary which is considered to be repugnant to the decorum of his profession, or into any charge of negligence or abuse made against any notary in the exercise of his profession or in connection with professional matters, unless the power to take cognizance of and deal with such conduct or charge of abuse or negligence is vested in some other authority under this Act or any other law for the time being in force.

Conditions for validity of a decision of Council and right of appeal

- No admonition shall be made nor shall any case be reported to the Attorney General and to the Court of Revision, unless the notary concerned shall have had full opportunity to defend himself, and no decision of the Notarial Council shall be valid unless it has been agreed to by at least two-thirds of the members of the Council.
- Any notary on whom any punishment has been inflicted, may appeal to the Court of Revision of Notarial Acts, by an application to be filed within **fifteen days** from the date on which notice has been given to him of the punishment so inflicted, and such court shall have power to reverse the decision of, or to vary the punishment inflicted by, the Notarial Council.

Power of the Notarial Council to make regulations

- The Notarial Council shall have power to make regulations respecting the functions and duties of the Notarial College and of the Notarial Council, the meetings to be held by the College and by the Council, the procedure to be followed at such meetings, and the payment of a fee by the members of the College, as well as all other regulations which may be deemed necessary or expedient for the maintenance of the College and the furtherance of its object.
- The Notarial Council shall have the power to make and amend, with the approval of the Notarial College, regulations respecting a Code of Ethics for Notaries.

Handling Challenges in Communication

Challenge	Solution
Client misunderstanding of legal procedures	Use **simple language**, written summaries, and checklists.
Delays in document submission	Set internal **reminders** and submit early when possible.
Lack of response from government offices	Establish a **direct point of contact** in relevant departments.
Court revision requests for clarification	Respond **promptly and in writing**, providing necessary corrections.

Navigating the procedures for submitting acts for revision, demonstrating effective interpersonal skills and professionalism

- Navigating the procedures for submitting acts for revision under Chapter 55 of the Laws of Malta requires a thorough understanding of legal obligations, meticulous attention to detail, and effective interpersonal skills to ensure seamless communication with stakeholders, including clients, the Notarial Archives, the Court of Revision of Notarial Acts, and regulatory authorities.
- Notaries must diligently prepare and submit acts within the prescribed timeframes, ensuring accuracy, completeness, and compliance with legal requirements to avoid penalties or disciplinary actions.

Navigating the procedures for submitting acts for revision, demonstrating effective interpersonal skills and professionalism … cont'd

- Professionalism is key when addressing inquiries or responding to revision requests from the Court, requiring clear, concise, and well-documented correspondence that reflects a commitment to ethical practice. Effective interpersonal skills, such as active listening, empathy, and clarity in communication, are essential when liaising with clients to explain legal procedures, managing expectations, and resolving any concerns that may arise. Additionally, maintaining respectful and professional interactions with government offices and judicial bodies fosters trust and facilitates efficient processing of documents.
- By staying updated on legal amendments, adhering to best practices in document management, and leveraging digital tools for record-keeping and submission tracking, notaries can streamline the revision process, uphold professional integrity, and ensure compliance with the Notarial Profession and Notarial Archives Act, ultimately contributing to the credibility and efficiency of Malta's legal framework.

The importance of Notaries acting towards their colleagues

- Notaries play a crucial role in upholding the integrity and credibility of the legal profession, and their conduct towards colleagues is fundamental in fostering a professional, ethical, and collaborative working environment. Mutual respect, honesty, and cooperation among notaries ensure the smooth execution of notarial duties, prevent conflicts, and promote the consistent application of legal principles.
- By maintaining open communication, sharing knowledge, and offering support when needed, notaries contribute to a culture of professional growth and accountability, which ultimately benefits the public and strengthens trust in the notarial system.
- Ethical conduct also requires notaries to avoid unfair competition, respect each other's clients, and adhere to the highest standards of confidentiality and discretion. Upholding these values not only enhances professional relationships but also reinforces the collective responsibility of notaries in safeguarding the rule of law and ensuring the proper administration of justice.

The role of the Notarial Council

- The **Notarial Council** serves as the primary regulatory and supervisory body responsible for ensuring the integrity, discipline, and professional conduct of notaries, playing a crucial role in upholding public confidence in the notarial profession. Its primary function is to oversee the proper administration of **notarial acts and records**, ensuring that notaries comply with the **Notarial Profession and Notarial Archives Act** and other applicable laws.
- The Council has the authority to **investigate complaints and disciplinary breaches**, ensuring that any misconduct, negligence, or unethical behavior by notaries is addressed through appropriate sanctions, including fines, suspensions, or even removal from practice in severe cases.
- It works in close collaboration with the **Court of Revision of Notarial Acts**, which is responsible for reviewing notarial acts and ensuring their accuracy, completeness, and compliance with legal requirements, thereby reinforcing accountability within the profession.
- Additionally, the Notarial Council is responsible for the **continuous professional development** of notaries, organizing **training programs, legal education, and guidance** to ensure practitioners remain up to date with the latest legal amendments, procedural changes, and ethical standards.

The Notarial Council

- It also plays a pivotal role in safeguarding the **Notarial Archives**, ensuring that all notarial acts are properly preserved, indexed, and submitted within the required legal timeframes, thereby maintaining the historical and legal record of public deeds and agreements. The Council also acts as an **advisory body**, guiding notaries on best practices, ethical dilemmas, and legislative interpretations, offering support in cases where legal uncertainty arises.
- Furthermore, it is entrusted with **representing the notarial profession** at a national and international level, collaborating with government institutions, the judiciary, and foreign notarial bodies to ensure that Malta's notarial system aligns with international legal standards. In addition to its regulatory duties, the Notarial Council actively promotes **professional integrity, transparency, and cooperation among notaries**, encouraging a **collegial work environment** where practitioners uphold respect and fairness in their dealings with one another. The Council also plays a **preventative role** by issuing guidelines, conducting audits, and implementing quality control measures to prevent errors, fraud, and malpractice within the profession.
- Ultimately, through its **disciplinary, educational, administrative, and advisory functions**, the Notarial Council ensures that notaries in Malta adhere to the **highest levels of legal and ethical responsibility**, thereby safeguarding the **credibility of the profession** and ensuring that the public's legal interests are protected through proper notarial practices.

Questions
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21 ACADEMY

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