

Notarial Acts and Notarial Codes of Ethics

Lecture Title: Overcoming Ethical Challenges in the Notarial Profession



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

The importance of confidentiality and the legal consequences of breaching it:

Confidentiality is a fundamental principle in notarial practice, playing a crucial role in upholding the trust placed in notaries by clients, the legal system, and the general public. A notarial office often handles sensitive and private information, including personal identification details, financial records, contractual terms, wills, powers of attorney, and other legally binding documents. As such, maintaining strict confidentiality is not only a professional obligation but also a legal requirement in most jurisdictions.



Preserving Client Trust and Integrity of the Office:

Clients expect that all information shared with a notary will remain private. Any breach of this trust can severely damage the reputation of the notarial office and diminish public confidence in the notarial system. Confidentiality ensures that clients feel safe disclosing sensitive information, which is essential for the notary to perform their duties accurately and effectively.



Legal and Ethical Duty:

Most countries have established laws, professional codes of conduct, and regulatory frameworks that require notaries to uphold client confidentiality. This includes not disclosing information to unauthorized third parties without the express consent of the client, unless required by law (e.g., under a court order or in cases involving criminal investigations).



Consequences of Breaching Confidentiality:

Breaching confidentiality in a notarial office can lead to serious legal and professional consequences, including:

- **Civil Liability:** The notary may be held liable for damages caused to a client or third party as a result of the breach. This can include financial losses or reputational harm suffered by the affected individuals.
- **Criminal Charges:** In cases where the breach involves malicious intent, fraud, or results in identity theft or financial crime, the notary may face criminal prosecution, including fines or imprisonment.



- **Professional Sanctions:** Notaries found guilty of breaching confidentiality may be subject to disciplinary actions by professional bodies or licensing authorities. These can include suspension, revocation of the notarial commission, or disqualification from practicing.
- **Loss of Employment and Reputation:** Even in the absence of legal penalties, a breach can lead to termination of employment and lasting damage to the notary's professional reputation, making future employment in the legal or public service sectors difficult.



Preventative Measures and Best Practices:

To uphold confidentiality, notarial offices should implement strict data protection policies, including:

- Secure storage of physical and electronic records
- Restricted access to confidential files
- Use of encrypted communication methods
- Regular staff training on confidentiality obligations and legal compliance



In summary, confidentiality in a notarial office is more than a matter of ethics—it's a legal and professional cornerstone. Its breach not only undermines the legitimacy of the notarial process but also exposes the notary to serious legal consequences. As custodians of sensitive legal documents and processes, notaries must remain vigilant and proactive in safeguarding client information.



The General Data Protection Regulation (GDPR) is a European Union regulation that applies uniformly across all EU member states, including Malta. In Malta, the GDPR is enforced alongside local data protection laws and is overseen by the **Office of the Information and Data Protection Commissioner (IDPC)**.

- The **GDPR (EU Regulation 2016/67G)** became enforceable on **25 May 2018** across the EU, including Malta.
- Malta supplements the GDPR through the **Data Protection Act (Chapter 586 of the Laws of Malta)**, which came into force concurrently with the GDPR.



In professions such as **law, notary, and accountancy**, GDPR compliance is particularly critical due to the volume and sensitivity of the data processed. These offices must:

- Ensure lawful bases for data processing (e.g., contract, legal obligation, consent)
- Maintain detailed records of processing activities
- Implement technical and organizational security measures
- Be transparent with clients about how their data is used



The General Data Protection Regulation (GDPR) applies fully to notarial offices, as these entities routinely process personal, sensitive, and often confidential data. In a notarial office in Malta, GDPR compliance is both a legal requirement and a professional obligation that supports trust, transparency, and accountability.



A notary must identify and document the **legal basis** under Article 6 of the GDPR for each type of data processing. Common lawful bases include:

- **Legal obligation** (e.g. maintaining public registers, identifying signatories, anti-money laundering compliance)
- **Performance of a contract** (e.g. drafting contracts, wills, powers of attorney)
- **Consent** (for processing not required by law or contract)
- **Public interest** (when acting in official capacity under Maltese law)

Notarial offices collect and process a variety of personal data, including:

- **Identity information** (name, ID number, passport data)
- **Contact details**
- **Property and inheritance information**
- **Marital status and family details**
- **Financial information**
- **Sensitive personal data** (e.g., religion, health, in rare cases)

A notarial office must uphold the **seven GDPR principles**:

1. **Lawfulness, fairness, and transparency** - Clearly inform clients how their data will be used.
2. **Purpose limitation** - Use the data only for specified, legitimate purposes.
3. **Data minimization** - Collect only what is strictly necessary.
4. **Accuracy** - Ensure records are accurate and up to date.
5. **Storage limitation** - Retain data only as long as needed by law.
6. **Integrity and confidentiality** - Implement strong security measures.
7. **Accountability** - Be able to demonstrate compliance.





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Handling Conflicts of Interest:

Avoiding **conflicts of interest** is essential for Maltese notaries, who are **public officers** entrusted with impartiality, legality, and confidentiality. Under Maltese law and ethical standards, a notary must act **independently and objectively**, ensuring that their personal interests—or relationships—do not interfere with their duty to all **parties involved** in a transaction.



In Malta, conflict of interest rules stem from:

- **The Notarial Profession and Notarial Archives Act (Cap. 55)**
- **Civil Code provisions**
- **General principles of impartiality, integrity, and good conduct expected from public officials**
- **Code of Ethics for the Notarial Profession (if applicable)**
- **A notary must not act in any case where impartiality could be reasonably questioned.**

A notary must not draw up, receive, or authenticate acts in which:

- The notary, their spouse/partner, children, siblings, or parents have a **direct or indirect interest**
- They stand to **benefit personally or financially**

This includes wills, donations, or contracts in which the notary would inherit or gain in any way.



In Malta, notaries must be **neutral third parties**—not legal advisers for either party. They **cannot favor one side** in transactions such as:

- Promise of sale agreements
- Property transfers
- Company formations

Steps to maintain impartiality:

- **Explain duties clearly** to all clients
- **Avoid giving legal advice that could disadvantage the other party**
- **Recommend independent legal advice** if necessary



If a potential conflict arises—e.g., due to a prior professional or family relationship—the notary must:

- **Disclose it to all parties involved**
- **Refuse the engagement** if impartiality cannot be assured
- **Document the disclosure** if needed (for accountability)



Don't represent both sides in contentious situations:

Even if parties agree, the notary must **not act in matters involving disputes** or where the parties' interests clearly diverge (e.g., divorce settlements, contested wills).

In such cases, the notary should:

- **Withdraw** from the matter
- Refer clients to **separate notaries or lawyers**



A notary should not combine roles that may compromise objectivity:

- Do not act as **agent or legal representative** of any party in a notarial transaction
- Do not act as a **witness** in your own act
- Avoid dual roles in **commercial or fiduciary relationships**



Practical Examples of Conflict of Interest for a Maltese Notary:		
Situation	Conflict?	Action
Drafting a will for a sibling	Yes	Decline
Acting in a sale between two unrelated parties	No (if impartial)	Proceed
Authenticating a deed where the notary's spouse is a buyer	Yes	Decline
Advising one party while drafting a promise of sale for both	Yes	Refer one party elsewhere
Preparing a contract for a company where the notary is a shareholder	Yes	Decline

The importance of honesty towards clients in a notarial office



1. Foundation of Trust

Honesty is the cornerstone of the notarial profession. Clients place their **trust** in a notary to handle important, often life-changing legal matters—such as wills, property sales, powers of attorney, and contracts. This trust cannot exist without a strong commitment to **truthfulness, transparency, and ethical conduct**.

When a notary is honest, clients feel confident that:

- Their documents are legally sound and properly executed.
- Their interests are not being undermined or misrepresented.
- They are being advised accurately, without deception or omission.
- Without honesty, the notarial office loses credibility, and the integrity of the documents and legal processes it oversees can be called into question.



2. Legal and Ethical Obligation

In Malta, notaries are **public officers** governed by the **Notarial Profession and Notarial Archives Act (Cap. 55)** and general legal ethics. They are expected to:

1. **Act in good faith**
2. **Provide accurate and complete information**
3. **Refrain from misleading or deceiving any party**



Honesty is not merely a personal virtue—it is a **legal duty**.
A notary who knowingly provides false information,
misleads a client, or withholds material facts may face:

- Disciplinary action
- Suspension or removal from the profession
- Civil or criminal liability



3. Impartial Role Requires Transparency

Unlike lawyers who represent one party, notaries must act impartially and for the benefit of all parties involved. This makes honesty even more crucial.

For example:

- In a promise of sale agreement, all parties must be fully informed about conditions, risks, and obligations.
- In the drafting of a will, the notary must ensure the testator fully understands the content and implications of the document.

Withholding information, exaggerating legal effects, or failing to correct misunderstandings can compromise the legal validity of the act and result in disputes or litigation.



4. Prevention of Legal Errors and Disputes

Many legal disputes arise due to **misunderstandings** or **misrepresentation** during the drafting or explanation of legal acts. An honest notary:

- **Clarifies complex legal language**
- **Explains consequences in a straightforward manner**
- **Ensures that the client's consent is truly informed**



Technology in the Notarial Profession:

Technology plays a crucial role in improving the **efficiency, accuracy, and security** of operations in a notarial office. Moving towards **paperless systems in notarial offices in Malta** is a strategic and progressive shift aligned with broader efforts to digitize public services and enhance legal efficiency. This transformation addresses both **modernization goals and environmental sustainability**, while also improving service delivery, record-keeping, and client satisfaction.



Malta has been working to modernize its legal and administrative systems, with **digitalization forming a central pillar of public service reform**.

A paperless notarial system supports EU initiatives for digital governance and compliance with data protection standards (e.g., **GDPR**).

Legal and Regulatory Considerations in Malta

1. Legislation Update Needs

- Malta's **Notarial Profession and Notarial Archives Act** may need amendments to fully support digital notarization and electronic deeds.
- Any move must comply with **EU Regulation G10/2014 (eIDAS)** on electronic identification and trust services

Data Protection Compliance

- Must align with **GDPR**, ensuring that client data is securely handled, stored, and transmitted.
- Regular audits and cyber-security protocols are essential.

Integration with National Systems

Must link with existing government platforms such as:

- **myNotary system** (already digitizing deed registration in some contexts)
- **Malta Business Registry (MBR)**
- **e-ID s e-Gov services**



Identity Malta Agency (IMA) plays a crucial role in supporting the work of notaries in Malta through a range of digital tools and services that facilitate identity verification, document validation, and access to official records. These tools are key to enhancing efficiency, reducing fraud, and ensuring legal compliance in the notarial process.

Overview of Identity Malta's Role in Notarial Services Identity Malta is responsible for:

- Civil registration (births, marriages, deaths)
- Identity management (eID cards, residency)
- Public registry services (marriage acts, deeds)
- Migration and citizenship records
- For notaries, Identity Malta acts as a central digital resource for identity verification and official record access, supporting their duties in document authentication and due diligence.



Public Registry Online Access (via PRS or myNotary Platform)

- **Function:** Digital access to registered deeds, birth/marriage/death certificates, and civil status records.
- **Use for Notaries:**
 - ❖ Obtaining certified copies of public acts (e.g., marriage certificates for succession).
 - ❖ Validating civil status in property transfers or testamentary documents.
- **Efficiency Benefit:** Eliminates the need for physical trips to the Public Registry and speeds up deed drafting.



Challenges to Implementation:

Challenge	Description
Legal inertia	Traditional legal culture may resist full digital transformation.
Initial costs	Investment in digital infrastructure, training, and security.
Cybersecurity risks	Sensitive documents must be protected from breaches.
Client accessibility	Older clients may prefer physical documents and in-person interaction.



Transitioning to a **paperless notarial office in Malta** is not just a technical upgrade—it's a step toward a more efficient, accessible, and transparent legal system. While there are legal and operational hurdles to overcome, the long-term benefits in terms of **speed, accuracy, compliance, and client service** make it a forward-looking move.





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