

Notarial Practice

Describe the process of a notary's task of verifying the identity, authenticity and will of the person that appears before him.

The job of a notary is to administer truthful oaths and declarations, draw factual powers of attorney, and attest to the authenticity of the signature, execution and contents of documents, deeds and contracts. This makes notaries the sole guardians of the integrity, veracity and reliability of public documents. How then does a notary serve to prevent fraud and protect the public against deceitful and injurious documents?

Any notary worth his salt will start the notarial act with a thorough reading of the document. This calls for the trained eye of a newspaper editor who is quick to spot grammatical errors, misspelled names and places and reports initiated by PR hacks. If such inaccuracies slip through the editor's attention, he and his newspaper will have a price to pay. The consequences are worse for a notary who mistakenly validates or notarizes an untruthful and incomplete document.

Once the document up for certification is determined to be above board, the next logical step for the notary is to ascertain the identity, authenticity and will of the person who will sign the document. The cardinal rule in notarial practice is that the document's signatory must appear in person before the notary. The law is quite equivocal in this regard. In the US state of Maryland, for example, its Secretary of State expressly forbids the notarization of the signature of a person who has not appeared before the notary.

If the notary has personal knowledge of the signer, this makes his job a lot easier. In such a case, his personal guarantee of the identity and authenticity of the person is embodied in the notarial clause that says: "...John Doe is known to me to be the person

described in and who executed the foregoing instrument.” If the notary has no personal knowledge of the signer, it is his responsibility to check the person’s identity.

The next step to determine the identity of the person involved, it behooves the notary to double check the person’s identity through a “competent evidence of identity.” This refers to a valid identification document issued by a legally constituted establishment or agency bearing the photograph and signature of the individual. An evidence of identity that could satisfy a notary is a driver’s license, a passport, a social security card or a voter’s ID.

So to be absolutely sure, a good notary seeks a match between the picture in the identification document and the actual appearance of his client, and between the signature in the ID and the signature the person executes in the notary’s presence. In the process, the notary requests the party to sign his name and then compare this sample signature done in his presence with that reflected in the identification documents.

Other more meticulous notaries go further than that. They bring in an impartial and credible witness to testify to the identity of the person involved in the notarial act through an oath or affirmation.

Through the signatory of the document to be notarized, a notary also seeks further confirmation or collaboration on the integrity and truthfulness of the transaction. So he administers an oath or affirmation asking the individual: “Do you solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of this document are true and correct?” The questions asked to certify the person’s desire and willingness to enter into the notarized transaction are framed on that basis. The notarial instrument may be an acknowledgment, in which the notary asks the individual: “Does this document constitute your own act and deed?” Or “Are you signing this document of your own free will?”

Some notaries go so far as to draw an affidavit in which the person “deposes and says”:

- That he is the affiant herein.
- That he is a resident of ...
- That he has read the affidavit and knows the contents thereof.
- That said affidavit is true to the best of his knowledge and belief,

Only when no trace of doubt lingers in the notary’s mind about the correctness and authenticity of the document and the identity and will of the signatory can he finally affix and sign the Testimonium Clause in the notarized instrument which says: “In witness thereof, I have hereunto set my hand and original seal...”