

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

GOVERNMENT

DECREE-LAW No. 3/2004 Of 4 February 2004

NOTARIES

The approval of a Notarial Code is an important tool for grounding the legislative framework of Timor-Leste, especially in regard to economic activity.

The notarial function is one of the parameters indispensable for the development of national wealth, given the fact that a Notary, more than a mere certifier of signatures, should strive to make the function he or she performs become a guarantor of security for legal acts and businesses performed between individuals and between the latter and the State, thus alleviating the arduous task to be carried out by judicial magistrates.

The norms that relate to the Notarial Services are formulated in such a way as to guarantee the principles of contractual freedom and of the legality of individual rights, of acts, of contracts and of legal businesses. The laws on the Notarial Services should be oriented towards the creation of notarial procedures ensuring simplicity, saving of time and resources, and efficiency, to the interested parties.

Defined in general terms, this decree-law is translated into the simplification of the procedures inherent in the performance of notarial acts and in the level of formalism, into the introduction of more rigorous and transparent rules into the notarial practice, and also into the streamlining of the exercise of the notarial function.

It enshrines the fundamental principles that comprise the civil-law notarial system, which Timor-Leste wants to become a part of. These principles obviously remain unchanged, principally the recognition of full credit and faith in the acts performed by the Notary, with the attendant consequences at the level of the probative value of documents.

Pursuant to the civil-law notarial principles, a general rule is established with the aim of defining the acts subject to solemnity, based on the creation, modification or abolition of subjective rights over immovable property, followed by the initiation of the typology, though not restrictive, of other acts that should be subject thereto.

At the level of the functioning of the services, notaries are now expected to be recruited from among lawyers with special qualification, and generic authority is exceptionally conferred upon certain entities for the performance of notarial acts.

Also bearing in mind the need to make every kind of notarial act, taken individually, more expeditious and simpler by removing from them those requirements considered superfluous, while always pursuing technical and legal certainty and rigour. This decree-law is meant to endow the notarial acts as a whole with a simpler technique, thereby transforming such acts into realities more accessible and intelligible to citizens. Results are thus envisaged at the level of efficiency and effectiveness of the daily notarial practice, for the benefit of both users and the notarial services themselves.

Pursuant to subsections 115.1(b) and 115.3 of the Constitution of the Democratic Republic of Timor-Leste, the Government enacts the following that shall have force of law:

HEADING I

NOTARIES

CHAPTER I

Notaries, notarial practice and appointment for the exercise of notarial functions

Section 1

Notary Public

A Notary Public is a notarial practitioner empowered by the State to draft and authorize under his or her signature all acts and contracts that should, with his or her intervention, be entered into between individuals or between the latter and a legal person of any kind.

Section 2

Notarial Practice

1. Notarial practice is meant for legal drafting of, and to give full credit and faith to, extra-judicial legal acts.
2. For the purposes of subsection 1 above, a Notary may provide advice to the parties in expressing their willingness to negotiate.

Section 3

Notarial Competence

1. The notarial competence shall be exercised by the Notary.
2. All other notarial officers may only perform such acts as may be assigned to them by an express legal provision.
3. Exceptionally, notarial functions are performed by:
 - (a) Timorese consular agents;
 - (b) entities vested with notarial authority by law in relation to certain acts;

4. Acts performed while using the authority given to special notarial organs shall be in compliance with the provisions of this decree-law, to the extent applicable.

Section 4
Organs with authority to appoint notaries

It is incumbent upon the Minister of Justice, represented by the National Director for Registries and Notarial Services, to appoint notaries for the exercise of notarial functions.

Section 5
Appointment Requirements

The pre-requisites for appointment as a Notary are:

- (a) university degree in law;
- (b) completion of the specific course imparted by the Judicial Training Centre;
- (c) be not less than 23 years of age;
- (d) having been convicted of no criminal offence;
- (e) be affected by no disability or incompatibility referred to in this decree-law;
- (f) be a Timorese national.

Section 6
Notary's oath of office

The National Directorate of Registries and Notarial Services shall set the date and time at which the appointee shall take oath of office.

Section 7
Solemn act of oath of office

The oath shall be taken before the Minister of Justice and the text thereof shall read as follows:
<<I swear to God and on my honour that I will fulfil satisfactorily and with loyalty the functions that have been invested in me, will abide by and enforce the Constitution and the laws of the Democratic Republic of Timor-Leste, and will never be undeserving of the trust owed to the nature of my occupation>>.

Section 8
Registration of the Notary's signature

Once the oath has been taken, the newly-sworn-in Notary shall record in the notaries' signature register, held by the National Directorate of Registries and Notarial Services, the handwritten signature and initials that he or she will use in the performance of his or her acts as a Notary, thus being authorized to engage in notarial practice.

Section 9
Secret Signature

1. A Notary may use a specific password to avoid the risk of his or her signature being vitiated or falsified.
2. To that effect, a specimen of such a secret signature shall be sent to the National Directorate of Registries and Notarial Services. The specimen signature shall be entered in a special register held and kept under strict vigilance by the latter, together with the respective notice.

Section 10
Functional competency

1. The Notary is vested with technical autonomy and independence in the exercise of his or her function and, upon appointment, is considered, from an administrative viewpoint, as an official of the Ministry of Justice, under the National Directorate of Registries and Notarial Services.
2. The remuneration of notaries shall be determined by a joint order from the Ministry of Planning and Finance, the Ministry of Justice, and the Ministry of State Administration.

Section 11
Technical competency

1. It is generally incumbent upon the Notary to draft a public act in accordance with the express will of the parties and to verify, interpret and conform it to the legal system, clarifying matters related to its value and scope.
2. It is especially incumbent upon the Notary:
 - (a) to draft public wills;
 - (b) to draft other public acts;
 - (c) to write minutes;
 - (d) to authenticate private documents; or simply certify the authorship of the handwriting with which such documents are written or the signatures affixed thereto;
 - (e) to issue life and identity certificates, as well as certificates of public office; certificates of management or administration of a legal person or company;
 - (f) to issue certificates of other facts that he or she checked;
 - (g) to certify translations of documents written in a foreign language or have them certified;
 - (h) to issue copies of public acts and of other documents on file;
 - (i) to issue photocopies of acts and other documents, or to cross-check photocopies made by the persons concerned with their respective originals;

- (j) to authenticate photocopies;
- (k) to telecopy, in a certified form, to other public services, for purposes of attestation, the contents of public acts, records or other documents held in the files of the registry, and receive those sent to him or her by the public services, under the same conditions.
- (l) to intervene in extra-judicial legal acts, to which the persons concerned intend to give special guarantees of certainty or of authenticity;
- (m) to conserve the documents required by law to be kept in the notarial files and those entrusted to him or her for that purpose.

Section 12

Place of Notarial Practice

1. The Ministry of Justice shall, following a proposal by the National Directorate of Registries and Notarial Services, indicate to the Notary the place where he or she will habitually and principally conduct notarial business.
2. Except as where otherwise provided in this decree-law, the Notary may perform, within and outside the jurisdiction where the notarial service is located, all acts that fall within his or her remit, which he or she may be requested to perform, and also those acts relating to persons domiciled or property situated outside his or her jurisdiction.
3. A Notary is empowered within his or her jurisdiction to publicly attest to any acts, facts or statements authorized by him or her in that capacity or that must, in accordance with the law, be authorized by a Notary.

Section 13

Registration of notaries

Once the provisions of the preceding sections have been complied with, the National Directorate of Registries and Notarial Services must:

- (a) enter the Notary in the register, assigning him or her a personal identification number;
- (b) report to all the courts, and especially to those that comprise the judicial district where the Notary is based, his or her appointment, including the password, signature and initials of the newly-appointed Notary;
- (c) publicise the notice of appointment in one local daily newspaper only once and attach to the appointee's file a copy of such notice confirming its publication.

CHAPTER II

Disabilities, suspensions, incompatibilities and restrictions

Section 14

Disabilities

The persons below may not be appointed as a Notary:

- (a) visually-impaired persons;
- (b) speaking or hearing-impaired persons, even if they know how to read and write through a special system;
- (c) those convicted of a criminal offence;
- (d) those convicted of false testimony, given either in writing or orally.

Section 15 Administrative Oversight of Notaries

The National Directorate of Registries and Notarial Services may, while exercising its supervisory authority and defending the trust owed to the Notarial Services, administratively suspend or dismiss a Notary prosecuted or convicted of a felony or criminal offence committed in a premeditated way, where the illicit deed might, in its opinion, hinder the performance of his or her functions.

Section 16 Disqualifications

The persons below may not serve as a Notary:

- (a) military personnel on active duty, church ministers and political party leaders;
- (b) the President of the Republic;
- (c) cabinet members;
- (d) members of Parliament;
- (e) all those who are prevented by law from engaging in notarial practice.

Section 17 Restrictions and prohibitions on notarial practice

Taking into account the contents of the acts, a Notary may not authorise:

- (a) any act that constitutes, acknowledges or changes, transfers or abolishes rights in his or her favour or against him or her, his or her spouse or relative up to the fourth degree of consanguinity or second degree of affinity;
- (b) open solemn wills containing provisions in his or her favour, in favour of his or her spouse or any relative up to the fourth degree;
- (c) acts or businesses pertaining to legal persons or entities in which any of the relatives by consanguinity or affinity mentioned in paragraph (a) have held or are holding a post as a director, manager, administrator or legal representative;
- (d) any other cases established by law.

HEADING II NOTARIAL RECORDS

CHAPTER I
Notarial registers

Section 18
Register

1. Every notarial act shall, in accordance with its nature, be entered in the following registers:
A Docket and Document Register.
2. A Notary may not authorise the recording of documents in registers other than the ones mentioned in subsection 1 above.
3. Registers are opened on the first day of January of each year and are closed on the 31st day of December of the same year.

CHAPTER II
Composition, opening and closure of a docket

Section 19
Docket

A docket means a register in which notaries and consuls and other officials enter, under the terms of section 3, the deeds to be issued, following the order of their respective dates.

Section 20
Docket System

1. The docket uses a loose-sheet notebook system, typewritten or printed.
2. Every docket shall have ten sheets, which shall all be initialled by the Office of the Inspector of Registries and Notarial Services.
3. Upon taking office and at the beginning of each calendar year, which shall extend from the 1st day of January until the 31st day of December, a Notary shall be given ten initialled dockets and the quantity of notarial paper sufficient for the exercise of his or her functions.
4. The Notary shall, in due course, request from the Office of the Inspector of Registries and Notarial Services initialled dockets in the event that the ten copies he or she has been given are not sufficient.

Section 21
Notarial paper

Every notarial activity shall be carried out using simple paper numbered and identified as notarial paper and bearing the security seal determined by the Office of the Inspector of Registries and Notarial Services.

Section 22
Regulating the docket entry system

The docket entry system, the year-closing system, the archiving system, and the system for returning any dockets that have not been used shall be the object of regulatory arrangements proposed by the National Directorate of Registries and Notarial Services, and approved by an order of the Minister of Justice.

CHAPTER III
On the document register, on entries and on the composition and closure of the register

Section 23
Legal act of entering documents

Entering a document is the legal act of attaching documents to the Document Register, following the procedures determined by this decree-law and the respective regulations.

Section 24
Document Register

1. A Document Register means a register comprised of documents, notarial minutes and special minutes of extra-registry interventions, attached thereto by the Notary holding them in the course of the calendar year, by virtue of the law, regulation or resolution from a court or administrative authority; or, at the request of the person concerned, for the general purpose of conservation or reproduction:

- (a) voluntary attachment of documents, which have not been requested within the scope of preparing a public deed or notarial minutes;
- (b) certified photocopies and certificates not authorized by the Notary shall be chronologically annotated each month, in special minutes, by clearly indicating the number of the intervention, the name of the applicant, the date and the number of sheets of paper used, and making a summary of the matter or content thereof;
- (c) the omission of any document entered in the special minutes mentioned above, failure to attach such minutes, or any change to the data contained therein, shall be punished according to the circumstances, under the terms of the law;
- (d) notarial minutes are drafted and authorized following the procedure established for public deeds, insofar as they are consistent with such acts and are attached once the act has been finalized;
- (e) the Document Register follows the terms applicable to the Docket, with the exception of the procedures inconsistent with its nature and composition.

2. The following minutes must be attached:

- (a) minutes and protest proceedings;
- (b) notarial minutes, whatever their nature;
- (c) general or specific powers of attorney awarded overseas, prior to or concurrently with their use in the country;

- (d) all other documents the attachment of which to the Document Register is determined by law or regulation.

Section 25
Power of national authorities to order attachment of documents

Judges and administrative authorities may, within their remit, order the attachment of documents, when deemed convenient.

Section 26
Voluntary attachments

Voluntary attachment of documents may be requested by the person interested in having the document in question attached.

Section 27
Content of the Document Register

The Document Register is comprised of:

- (a) public or private documents attached under the terms of the preceding sections;
- (b) notarial minutes stating facts or things;
- (c) minutes indicating a request made by the person concerned and its attachment to the Register.

Section 28
**Attachment of documents written in a language
other than either of the official ones**

1. For the purpose of attaching a document written in a language other than either of the official ones of the Democratic Republic of Timor-Leste, such a document is required to be translated either by the Notary or a sworn translator licensed by the Ministry of Justice.

2. In the absence of a professional translator, the translation shall be made by two translators, who will appear before the Notary upon request for the attachment of the document and will sign the respective minutes, assuming responsibility for such a translation.

Section 29
Document Registration System

The entry system of the Document Register shall be regulated by an order of the Minister of Justice.

Section 30
Removal of attached documents

1. An attached document may not be removed without prior court order and prior endorsement by the Public Prosecution Service, and the removal thereof may only occur on grounds of a compelling need, in case of error or improper attachment of documents.
2. The procedure for removing documents shall be the object of regulatory arrangements approved by ministerial order.

CHAPTER III

Secrecy, conservation and storage of Notarial Records

Section 31

Confidentiality of Records

Notarial records are generally confidential and may only be examined by:

- (a) judges and public prosecutors, in compliance with court decisions;
- (b) notarial inspectors in the course of extraordinary visits and mandatory inspections;
- (c) the parties, their heirs or attorneys empowered to do so;
- (d) officials authorised by the National Directorate of Registries and Notarial Services, and for the purpose of monitoring the payment of emoluments due.

Section 32

Exhibition of Records

Records are exhibited by the Notary himself or herself and such an exhibition shall only cover the relevant acts or parts thereof.

Section 33

Refusal to Exhibit

Where a Notary refuses to exhibit a record, the interested person may appeal to the National Director of Registries and Notarial Services, under the terms provided for by Regulation.

Section 34

Conservation and Integrity of Records

A Notary is required to take all action necessary for the conservation and integrity of the records in his or her custody and is administratively and civilly liable, in the event of damage to individuals or to the State, without prejudice to any criminal action that might be filed.

Section 35

Supervision of Notarial Archives

The Notarial Archives are under the supervision of the National Directorate of Registries and Notarial Services, through a specialised department called Office of the Inspector of Registries

and Notarial Services, the organic structure and competencies of which shall be the object of a specific regulation.

Section 36
Listing Authorised Wills

1. A Notary shall refer to the Wills Registry the minutes of authorised wills, within three days of the date on which such wills have been authorised.
2. Such a listing shall only be submitted to the Wills Registry in relation to authorised wills and shall contain the following elements:
 - (a) nature of the act;
 - (b) full names, nationality, marital status, domicile and occupation of the grantor and, where feasible, the date and place of his or her birth;
 - (c) place and date of the grant;
 - (d) full name and domicile of the Notary and of the witnesses.

HEADING III
NOTARIAL DOCUMENTS

CHAPTER I
Public Deeds

Section 37
Public Deed

1. A Public Deed is a notarial instrument whereby a legal business is entered in the Docket, under the terms established by law and after having been authorised by the Notary.
2. In addition to other acts specifically provided for by law, the following are performed by public deed:
 - (a) acts that require certification, establishment, acquisition, modification, sharing or abolition of rights of ownership, usufruct, use and housing, emphyteusis and superficies, or of servitude over immovable property;
 - (b) acts that require the revocation, rectification or change of businesses that, by virtue of the law or at the discretion of the parties, have been performed by public deed;
 - (c) acts to constitute, modify or dissolve a voluntary mortgage or antichresis, and to determine or change the amount of monthly food supplies, when such acts encumber immovable property;
 - (d) acts to dispose of or repudiate inheritances or legacies, provided that these form part of immovable property;
 - (e) cession of a mortgage or of the degree of priority of its registration, cancellation of a mortgage bond and cession or pledge of mortgage credits;
 - (f) dealings for the transfer of ownership of commercial or industrial establishments;

- (g) perpetual leases, or life leases where the item or right disposed of is over real property;
- (h) notarial qualification;
- (i) sharing of real property or sharing of stock of companies forming part of real property.

Section 38
Drafting Public Deeds

1. Public deeds are drafted in Portuguese and in a clear and precise manner.
2. A Notary may translate a deed into Tetum, if requested by the interested parties to do so, and enter it in the Docket, by following the same procedure, and mention shall be made of the faithfulness of such a translation.

Section 39
Translation services

Where a public deed is issued by a person who does not know the Portuguese language, a sworn translator shall assist him or her, under the terms of section 28, no translator being used where the Notary knows the language of both parties.

Section 40
Numbering deeds

Deeds shall be numbered in sequential order and shall be titled.

Section 41
Faulty and void deeds

1. A faulty deed may have no title and, where it does, the number thereof is repeated in the immediately subsequent deed.
2. A void deed is titled and the number thereof is not repeated in the immediately subsequent deed.
3. A faulty deed is that which is not fully drafted and is rendered null by writing the term “FAULTY” therein; the Notary shall not sign such a deed, and no emoluments shall be levied on it.
4. A void deed is that which has been fully drafted by the Notary and which neither the parties nor the Notary has signed it, with a mention being made, nevertheless, that such a deed has been rendered void and that the applicants shall pay emoluments at the discretion of the Notary.

Section 42
Basic Information of a Public Deed

Any public deed shall contain:

- (a) the place and date of drafting;
- (b) full name of the grantor and of witnesses, where applicable, as well as other names by which the person is known in his or her private life and his or her ID number;
- (c) nationality, marital status, age, full domicile, with a detailed mention thereof, of any person who appears in the deed, either as a grantor or witness or legal or voluntary representative;
- (d) where the grantor is married, widowed or divorced the matrimonial property regime and full name of the spouse are mentioned;
- (e) the identifying elements of the grantors, witnesses and grantees relate to the statements made by them before the Notary and the formers are liable for the veracity of such statements.

Section 43 **Reading, Granting, Signing and Authorisation of Public Deeds**

The Notarial Regulation shall regulate:

- (a) the form that the reading, granting, signing or authorisation of public deeds should take on;
- (b) how to move to the following page;
- (c) where witnesses knowing the identity of the parties or acting as subscribing witnesses shall intervene in cases where the grantors are speaking or hearing-impaired persons, do not know how to sign their name, or are blind, and the characteristics that witnesses shall have;
- (d) the clauses that the Notary may add to a deed after drafting or before signing;
- (e) the reading, granting and signing of a deed shall, in principle, be done in a single act, except where otherwise provided for by the regulation.

Section 44 **Attesting witness**

Where the Notary knows the grantors, he or she attests to that fact in the deed and where he or she does not know the grantors, he or she crosschecks the identity of the grantors against a statement made by the attesting witnesses who shall sign the deed.

Section 45 **Witnesses**

1. The Regulation shall establish the characteristics that both subscribing and attesting witnesses shall be required to have. Subscribing witnesses may only intervene in the following cases:

- (a) open solemn wills;
- (b) where any of the grantors does not know or is not able to sign, is blind, or uses a script other than Roman characters;
- (c) where one of the grantors so requires;

(d) whenever the Notary deems it convenient.

2. The notarial regulation shall establish the conditions to be met by attesting or subscribing witnesses.

CHAPTER II Notarial Minutes

Section 46 Notarial Minutes

A Notary shall authorise minutes in which facts or items witnessed by him or her or statements made in his or her presence are recorded, following the procedure established for public deeds, to the extent consistent with the nature of such acts and without prejudice to the modifications provided for in the section below.

Section 47 Drafting Notarial Minutes

The following principles shall be taken into account in drafting notarial minutes:

- (a) to authenticate the identity of the persons signing the minutes, the ID card number is exhibited, and attesting witnesses may be waived, whenever such witnesses are not expressly required by law;
- (b) the intervention of subscribing witnesses is not required, except where the declarant does not know how to sign or is not able to do it, or is blind, in which case the signature shall be affixed by one of the witnesses at the request of the declarant. Subscribing witnesses may intervene where the Notary, the declarant or the law so determines;
- (c) a single act or the same context is not required;
- (d) In the absence of legal impediment, the entry of the minutes in the docket is recommended;

Section 48 Purpose of Notarial Minutes

1. The purpose of the minutes shall be:

- (a) to notify or apply for, at the request of one of the parties or by legal or judicial determination;
- (b) to list extra-registry interventions, with the aim of recompiling the key data of notarial acts, in case of issuance of notarial attestations by exhibition, minutes of sealed wills, or notarial certificates;
- (c) minutes of attachment of voluntary documents, of public or private documents;
- (d) to verify, with the aim of crosschecking facts occurred or situations recorded or witnessed by himself or herself;
- (e) to obligatorily attach documents, by legal determination.

2. The Regulation shall establish the format such minutes shall have.

Section 49
Minutes for attaching documents

1. Minutes in which the attachment of a document is recorded shall contain:

- (a) the title, specifying the corresponding attachment number in the document register;
- (b) the place and date on which a document is attached;
- (c) the nature of the minutes, where obligatory, indicating the legal provision; where judicial or administrative, stating the determination that imposes it and the document from which they were transcribed; where voluntary, making mention of the interested party's request;
- (d) the enumeration of documents being attached to register;
- (e) the sheets occupied by the attachment;
- (f) a reference to the previous one;
- (g) the signature, initials and stamp of the Notary.

2. The application and the attachment proper, with the contents and procedures as established by the regulation and this decree-law, may be recorded in the same minutes.

CHAPTER III
Copies, attestations and certificates

Section 50
First copy of public deeds and attestations

1. A Notary shall deliver to the parties, whatever the nature of the act, a copy of the public deed or attestation of the attachment effected.

2. The delivery shall be effected within three days after the date of signature of the deed or of the entry thereof in the docket.

3. The fulfilment of the obligation to issue a first copy or attestation is not subject to a request from the parties.

4. The copy or attestation to be issued, under the terms of this section, is the one required to be entered at the Public Registries and shall be issued to the party benefiting from the entry thereof.

5. The other party(ies) may, at all times, request a copy of the deed or attestation of attachment to the document register.

Section 51
Procedures for issuing copies

The notarial regulation shall establish the procedure and relevance for the issuance of copies, as well as the regulatory arrangements in case of loss of the first copy of the deed or attestation of attachment to the document register.

Section 52
Marginal Notes

1. A Notary shall take note of the copies and attestations he or she issues, upon the issuance thereof.
2. The note shall be written into the margin of the original deed or attachment that corresponds to the copy or attestation.
3. The notarial regulation arising out of this law shall establish the format and the contents of the marginal note.

Section 53
Attestations by exhibition

1. In addition to the attestations referred to in the preceding sections, a Notary may issue an attestation by exhibition of a public or private document, at the request of the interested party and with the aim of certifying the existence, nature or contents of the document reproduced, and such does not imply superseding it in regard to its validity and effects.
2. In the authenticated photocopy, which is a document reproduced by using a photographic, electrostatic or similar procedure, is stated its compliance with the attestation by exhibition and not by certification.

Section 54
Format and contents of attestation by exhibition

The notarial regulation shall establish the format and contents of the attestation by exhibition.

Section 55
The Object of Certificates

A Notary may issue a certificate the object of which is:

- (a) to declare the existence of a legal situation, act or fact, known to the Notary or proved by the latter through the exhibition of a public or private document;
- (b) to certify a signature affixed to a private document issued and signed in his or her presence.

Section 56
Elements of a Certificate

In the cases referred to in paragraph (a) of the preceding section, the Notary shall make a clear and precise list of the following elements:

- (a) act or fact that is the object of the certificate;
- (b) public or private document from which such an act or fact results, the date, the nature and its characteristics;
- (c) the exhibition of the said documents or the personal perusal thereof, indicating, in this case, the registry or place where he or she perused them;
- (d) where the Notary personally knows the certified act or fact, he or she shall mention this fact, assuming responsibility for its existence and compliance.

Section 57
Requirements for a Certificate

1. In the cases provided for in subsection 55(b), the Notary shall meet the following requirements:

- (a) a grantor applying for the authentication of his or her signature shall identify himself or herself through all his or her particulars;
- (b) a grantor is identified either by personal knowledge or by attesting witnesses;
- (c) the Notary shall read out the document to the grantor, and shall receive a confirmation that it has been issued;
- (d) a grantor shall sign the document in the presence of the Notary, at the same moment as the act is performed; where he or she has already signed it, he or she will acknowledge the signature affixed to the document as his or her own and shall subscribe a certificate drafted by the Notary indicating the reason for doing so;
- (e) where a grantor does not know how to sign or is not able to sign, he or she shall declare it in the presence of the witnesses and shall request one of the witnesses to sign.

2. The witness shall sign the document stating that he or she is doing it at the request of the impaired grantor; and such a statement is written before the signature that acts in this two-fold capacity.

3. The Notary may require the grantor to affix to the document, in the space reserved for signatures, his or her right-hand thumbprint or, in the absence of his or her right-hand thumb, his or her left-hand thumbprint.

4. The certification of the signature of a person who has not expressly applied for such a notarial intervention shall be forbidden.

Section 58
Contents of a Certificate

Any notarial certificate shall include:

- (a) the full name of the person who has requested its issuance, where these particulars do not result from the very certification modality, in conformity with the preceding sections;
- (b) the Notary may require that an official identity document, national or foreign, proving the identity of the applicant, be exhibited;
- (c) the requirements, particulars and proofs as established in the preceding sections in order to clearly demonstrate compliance with said sections;
- (d) the mentions required by law or regulation, depending on the intervention applied for;
- (e) the place and date of issuance of the certificate, the stamp and signature of the Notary.

HEADING IV
MANAGEMENT AND DISCIPLINE OF NOTARIAL SERVICES

CHAPTER I
Management

Section 59
Supervision of the Notarial Services

It is exclusively incumbent upon the National Directorate of Registries and Notarial Services to supervise the notarial services, through the exercise of monitoring, disciplinary and regulatory powers over notarial practice.

CHAPTER II
Visit to Notarial Services

Section 60
Exposure of Notarial Registers

A Notary has the obligation to make the Dockets or Document Registers available to the Office of the Inspector of Registries and Notarial Services, wherever the registry is located.

Section 61
Annual Visit

1. The annual visit shall take place within the first two months of the year.
2. The Office of the Inspector of Registries and Notarial Services may attend without the need for a written notification, after prior consultation with the Department of Administration,

Finance and Logistics, National Directorate of Registries and Notarial Services, to make sure that emoluments are levied and paid in the prescribed manner.

Section 62
Extraordinary visit

1. The Office of the Inspector of Registries and Notarial Services may, at all times, and without a need for justification, require the production of all or part of the notarial records.
2. The attendance shall be by an official designated by the National Directorate of Registries and Notarial Services, to act as the Inspector of Registries and Notarial Services.

Section 63
Officials empowered to pay the visit

The officials of the Office of the Inspector of Registries and Notarial Services empowered to pay such visits shall enter into the last sheet of each notebook of the Docket and of the Document Register a note of revision containing:

- (a) the term 'VISITED';
- (b) the day, the month and the year when the visit was paid;
- (c) the signature or endorsement by the visiting official.

CHPATER III
On the discipline of notaries

Section 64
Competency

1. It is incumbent upon the National Directorate of Registries and Notarial Services to enforce the code of discipline of notaries, in conformity with this Chapter and with all other legislation applicable to civil servants.
2. The National Directorate of Registries and Notarial Services may, to that effect, appoint a disciplinary committee.

Section 65
Disciplinary Proceeding

The code of discipline applicable to officials of the National Directorate of Registries and Notarial Services shall be the same as the one applicable to all other civil servants, without prejudice to civil or criminal liability.

HEADING V
SPECIAL DEEDS

Section 66
Qualification of heirs

1. Qualification of heirs may be sought through a Notary.
2. Qualification of heirs may not be sought through a Notary where one of the heirs is underage.

Section 67
Qualifying Deed

1. Notarial qualification consists of a statement made in a public deed by three persons the Notary deems trustworthy, attesting that the applicants are heirs of the deceased and that no one else takes precedence over, or competes with, them in the succession.
2. The statement shall indicate the full name, marital status, place of birth and the previous habitual residency of the person bequeathing the inheritance and of the applicants.

Section 68
Admissible Declarants

For the purposes of the preceding section, persons disqualified as witnesses, relatives that may succeed the applicants, or a spouse of either of the former, do not qualify as declarants.

Section 69
Attachments

The following documents shall be attached to a qualifying deed:

- (a) death certificate of the person bequeathing the inheritance;
- (b) documents proving the legitimate succession, where such succession is based on the capacity of any of the applicants as an inheritor;
- (c) certificate of the full record of the will or bequest deed, even if the succession is not based on any of such acts.

Section 70
Effects

1. Notarial qualification has the same effects as judicial qualification and is a title in and of itself allowing that the following acts be collectively performed, on behalf of all heirs and of the surviving spouse:
 - (a) entering records at the real estate registration office;
 - (b) entering records at the company registration office and at the vehicle registration office;
 - (c) recording securities;
 - (d) recording the transfer of copyright in literary, scientific, artistic or industrial work;
 - (e) withdrawing money or other values;

2. The acts referred to in paragraphs (a) to (d) of subsection 1 above may be applied for by any of the qualified heirs or by the surviving spouse.

Section 71 Challenge

In addition to initiating legal action under the terms of the civil procedure law, an unqualified heir who wishes to challenge a notarial qualification shall request the court to immediately notify the relevant registry of the pendency of the case.

Section 72 Qualification of Legatees

The provisions of the preceding sections shall apply, mutatis mutandis, to the qualification of legatees, where such legatees are unspecified or generically designated, or where the inheritance is all left as legacies.

HEADING VI REBUTTALS AND APPEALS

CHAPTER I ON REBUTTALS AND APPEALS

Section 73 Refusal to Perform an Act

1. The Notary shall refuse to perform an act that he or she is required to perform by law, in the following cases:

- a) where the act is null;
- b) where the act does not fall within his or her competencies or where he or she is personally unable to perform it;
- c) where he or she has doubts that any of the intervening parties is in full possession of his or her mental faculties;
- d) where the parties have not made the required preparations.

2. Doubts about any of the intervening parties' being in full possession of all his or her mental faculties cease to be a ground for refusal where a medical document attesting to the mental health of the parties is attached to the act.

3. In the case of a will, the absence of preparation does not constitute a ground for refusal.

4. The intervention of the Notary may not be refused on grounds of the act being voidable or ineffective.

5. In the cases contemplated in subsection (4) above, the Notary shall warn the parties of the existence of a defect and shall record in the act any warning he or she may have given.

CHAPTER II
Appeals

Section 74
Appeals

1. Where the Notary refuses to perform an act, the person concerned may appeal to the National Director of Registries and Notarial Services.
2. The person concerned may, acting in his or her discretion, lodge an appeal with the competent court.

Section 75
Refused Act the Performance of Which is Determined on Appeal

A refused act the performance of which is determined on appeal shall be effected by the respondent Notary pursuant to the decision rendered, as soon as the parties so request.

HEADING VII
FINAL AND TRANSITIONAL PROVISIONS

CHAPTER I
Transitional Provisions

Section 76

The implementation of this decree-law shall begin on a date to be set by an order issued by the Minister of Justice, in accordance with a specific timeframe.

CHAPTER II
Final Provisions

Section 77
Emoluments

Emoluments and charges to be levied by notaries shall be established by a joint order of the Ministry of Planning and Finance and of the Ministry of Justice, to be approved within 30 days.

Section 78
Notarial Regulation

The Notarial Regulation shall be approved by order of the Minister of Justice within 30 days.

Section 79
Entry into Force

This decree-law comes into force 30 days following the date of its publication.

Seen and approved by the Council of Ministers on 9 December 2003. -

The Prime Minister

[Signed]
(Mari Bim Amude Alkatiri)

The Minister of Justice

[Signed]
(Domingos Maria Sarmiento)

Promulgated on 22 January 2004.

To be published.

The President of the Republic

[Signed]
(Kay Rala Xanana Gusmão)