

NOTARY WORLD



APRIL 2024



WELCOME TO - NOTARY WORLD

Notary World is C.L.A.N.'s flagship publication for members and is full of articles and news designed to continually inform and educate.

Please do not hesitate to send in your feedback and if you want to contribute to Notary World, contact Ken Lord, Editor.

TOP NEWS INSIDE

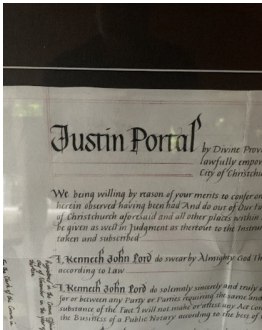
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INTRODUCTION

In this edition of Notary World, after a short editorial, we have New Zealand President Stewart Germann's report, Iain Ostrowski-Rogers' note on Dealing With Foreign Languages as a Notary and the Difference Between Notarial Acts in the Public and Private Forms, Professor Peter Zablud's Practice Note Notarising American Documents sent from the USA, a practical example of Fraud and Possible Laundering by Tony Coupe, a Practice Note from Julie Hutton on Security Features Of New Zealand Passports, some humour from Don Thomas, Dr John Kirkhope and Anthony Northey concluding with an appreciation of Justin McKenna following his retirement from CLAN. My sincere thanks to all those who have contributed.

EDITORIAL

As notaries, it befits us to occasionally reread our Notarial Faculties. I revel in the language of mine. Re-reading it I noticed something that had already puzzled me.



The name of the current Archbishop of Canterbury is Justin Welby, but it is shown on my faculty as Justin Portal. I wrote to Neil Turpin at the Faculty Office of the Archbishop of Canterbury to ask why and received a prompt response as below.

Dear Ken

Thanks for your email.

Bishops of the Church of England are by convention named in legal documents using just their first name(s) followed by the title of their See. When signing such documents they will use a + to denote their status as a Bishop followed by their Christian name and the name of their See, either in Latin or English. Thus, the Archbishop will sign +Justin Cantaur and (by way of further example) the Bishop of Salisbury will sign +Stephen Sarum.

It follows the same convention as the British Aristocracy. For example, the Duke of Westminster is styled "Hugh Richard Louis, 7th Duke of Westminster"; but his family name is Grosvenor which would normally be omitted from legal documents.

Kind regards

Neil

Neil Turpin

Chief Clerk

Faculty Office of the Archbishop of Canterbury



Ken Lord, Editor

Email: kjl16@uclive.ac.nz

Now retired from the practise of law (although still enrolled as a lawyer), Ken remains practicing as a Notary Public. He is one of the authors of the LexisNexis Law of Trusts, having written and reviewed the chapter devoted to charity law, as well as chapters in the LexisNexis publication, The Law and Practice of Charities in New Zealand.

Graduating LLB from the University of Canterbury in 1977, Ken completed a BA in English and Russian literature in 2004, a BA(Hons) First Class in Russian and English literature, and is now pursuing a master's degree on the legal language of Shakespeare.



PRESIDENT'S REPORT FROM STEWART GERMANN

Dear Notary

It is with great pleasure that I present my final President's Report for the latest issue of Notary World March 2024.

The Council held a meeting by Zoom on 9 November 2023 and all directors were present including Jackie Tait of Vancouver who had recently been appointed. As confirmed at that meeting, Mr Roy Hasda of Adelaide, South Australia, has been appointed to represent the Notaries Society of South Australia Inc which has joined C.L.A.N. as a notariat member.

I am also delighted to report that we have had some individual notaries joining and in particular from Victoria, Australia and England and Wales. There is considerable interest from Africa including Nigeria and also interest from Guernsey, Jersey and Gibraltar. This is very exciting to the Board as it makes us even more global.

Peter Zabłud of Melbourne presented a webinar on the topic of notarising American documents and the problems associated with that. It was very well received and it contained a lot of useful information for notaries in general.

Please look at our Business Plan which is published on the website and if anyone has any suggestions or queries, we will gladly receive them. They should be sent to the Secretary of the Society at the email address of info@commonlawnotary.org.

There will be an in-person meeting of the Board of Directors in London on Saturday 27 April 2024. At that meeting I will pass the Presidential baton to Kate Roome of Vancouver who will be the new President of our Society for the ensuing two years.

Notarial practice around the world is not straightforward. There has been an increase in suspicious documents and it is always essential to check the identity of the member of the public appearing before you. For my part, I require two forms of identification – original passport which must not have expired and original driver licence.

If you go to www.commonlawnotary.org and click on About you will see that eight directors are listed. They represent notariats in New Zealand, Ireland, England, British Columbia and South Australia.

It has been my pleasure to have been the President for the past four years and I wish Kate Roome all the very best.

Stewart Germann



Stewart Germann, B.Com, LLB, FCIS, CFInstD, CFE, Notary Public

Partner

Stewart Germann is a Barrister and Solicitor of the High Court of New Zealand and he attended the University of Auckland. He has the qualifications of B.Com, LLB, FCIS, CFInstD, CFE and Notary Public and he specialises in franchising, licensing, sale and purchase of businesses and commercial law.

Stewart has over 40 years' experience in franchising law and has acted for many franchisors in New Zealand and overseas. He also acts for franchisees advising them about a particular franchise and commenting on the form of franchise documents.

DEALING WITH FOREIGN LANGUAGES AS A NOTARY AND THE DIFFERENCE BETWEEN NOTARIAL ACTS IN THE PUBLIC AND PRIVATE FORMS

EXECUTIVE SUMMARY

- Notaries are often asked to deal with documents that are in foreign languages.
- You must understand the document that you are authenticating and the context in which the authentication is needed.
- If you are adding a notarial certificate to a document presented to you by an appearer, once you have satisfied yourself as to the meaning of the document, you can properly add your certificate in English.
- If you are presented with a draft notarial act in the public form in bilingual format or wholly in a foreign language, you must understand the foreign language if you are to issue the act.

RISK ASSESSMENT WHEN DEALING WITH DOCUMENTS IN A FOREIGN LANGUAGE

Many documents that are presented to notaries are in languages other than English. Most of these are in bilingual format to enable the appearer to understand what is being signed, but the appearer may be competent in the language of the place where the matter in question is being dealt with and may wish to sign a document that is wholly in a language other than English.

The risk profile of any job involving a language that you do not personally understand is necessarily higher than if you are dealing with documents in English and/or another language in which you are competent. Your assessments of sanctions risk, political exposure risk, general fraud, anti-money laundering, countering the financing of terrorism and proliferation financing risk, and your assessment of the capacity of the appearer all require an understanding of the matter being authenticated and of the overall context for your notarial services being requested.

Understanding the risk posed by the use of a foreign language is an important safeguard for you and for the appearer: you do not wish to authenticate a document that turns out to be fraudulent or meaningless, and the appearer does not wish to undertake liabilities and obligations that were unknown or misunderstood at the time of signing.

There are a number of techniques for mitigating or managing the risks inherent in dealing with documents in foreign languages.

A key factor is the form of notarial act that is requested.

NOTARIAL ACTS IN THE PRIVATE FORM

If you are adding your notarial certificate in English to a foreign-language document produced by the appearer (that

is to say you are producing a notarial act in the private form), you can take steps to understand that document, assess the risks in the normal way, and control your liability with careful drafting of your notarial certificate and by using the appropriate form of Acknowledgment for an appearer acting in a personal capacity as set out in Appendix 7 of “The Notary of Ireland – Law and Practice”, which records at point 4(e) “you told me that you are not competent in the language in which the Document(s) is/are drawn up – where a language other than English is used”, (unless you are competent in that language, in which case the Acknowledgment should be adjusted accordingly). The Acknowledgment does not relieve you of your duty to carry out the general risk assessments mentioned above, so you must take steps to satisfy yourself as to the meaning of the document. If the document is presented in bilingual format, as is often the case, and has been prepared by a competent lawyer in the relevant jurisdiction who is advising the appearer on the matter at hand, confirmation from that lawyer that the English and foreign-language texts correspond should be all that is needed. It may be necessary to make adjustments to the text in English or simply to insert a date, and that would present a good opportunity to contact the foreign lawyer to ensure that the amendment or insertion is correctly matched in the foreign language. Contacting the appearer’s lawyer (if there is one) in the receiving jurisdiction is always a good idea as it will provide you with some comfort that the service you are providing will be effective and it reassures the foreign lawyer that his or her client is in safe hands when accessing your services. If the foreign lawyer advises that the service should be provided in a different manner, including amendments to your proposed notarial certificate, you have the opportunity to take that advice in good time and ensure the best outcome for the appearer. You may also find that you get repeat business from the foreign lawyer, so it is time well spent in many ways.

If the appearer has not engaged competent legal advice in the relevant jurisdiction, the task is somewhat harder. Taking

the appearer's word for the accuracy or lawfulness of the contents of the document is not a safe way of proceeding; you must be able to make that assessment yourself using your own abilities or by relying on appropriate third parties. It may be tempting to use Google Translate or other online translation services, but take care! If you put the appearer's personal data and confidential family or commercial information into an unsecured online environment, that would be a serious data breach. If you have the appearer's express permission to do so, you may decide that the translation you receive is sufficient to establish the meaning and lawfulness of the document, but despite remarkable improvement in the quality of free online translation services in recent years, they are far from infallible. In particular, this type of translation tool will not provide a coherent translation of a defective text (whereas a human translator would realise that the text was defective and be able to provide a coherent rendering

of it or explain the ambiguities or errors).

If the above methods of managing the risk are not available to you, you may wish to consider referring the instruction to a notary who has the relevant linguistic ability, or to commission a professional translation.

Once you have satisfied yourself as to the meaning of the document presented to you using one of the methods described above, you can safely proceed to add your notarial certificate that will set out the matters that you have verified and for which you are willing to accept liability.

SOME PRACTICAL EXAMPLES

If a document like this is presented to you (the company and the appearer are fictional):

<p>URNr. S / -</p>	
<p><i>Nur der deutsche Text ist Teil der Anmeldung, die englische Fassung ist lediglich zu Informationszwecken beigelegt.</i></p>	<p>Only the German text is object of the declaration, the English text is added for information purposes only.</p>
<p>Amtsgericht München - Registergericht -</p>	
<p>Mulch Technology Germany GmbH Sitz: München HRB 2171**</p>	
<p>Die (neue) Geschäftsanschrift der Mulch Technology Germany GmbH ist wie folgt:</p>	<p>The (new) business address of Mulch Technology Germany GmbH is as follows:</p>
<p>Claudius-Keller-Straße 7, 81669 München,</p>	<p>Claudius-Keller-Straße 7, 81669 München,</p>
<p>Die Kosten dieser Anmeldung und ihres Vollzugs trägt die Gesellschaft.</p>	<p>All costs connected with this application and its execution shall be borne by the company.</p>
<p>Vollmacht</p>	<p>Power of Attorney</p>
<p>Die Notare Schumann und Beethoven in München, ihre Vertreter und Amtsnachfolger sowie jeder ihrer Mitarbeiter je einzeln werden beauftragt und - befreit von den Beschränkungen des § 181 BGB - bevollmächtigt, alle Erklärungen abzugeben und entgegenzunehmen, die noch zum Vollzug dieser Anmeldung erforderlich oder zweckdienlich sind, einschließlich der Befugnis, diese Anmeldung zu ändern</p>	<p>The notaries Schumann and Beethoven in Munich, their deputies and successors as well as each of their employees individually are mandated and – relieved from § 181 BGB – empowered to make and receive all declarations necessary for or conducive to the execution of this application, including modifications and amendments of this application</p>
<p>Ort/Datum</p>	<p>place/date</p>
<p>..... Mark Henshaw (Geschäftsführer/Director) [Muster / Sample]</p>	

[Beglaubigung, Apostille]

1. Beglaubigung

Hiermit beglaubige ich die Echtheit der vorstehenden, vor mir vollzogenen Unterschrift von Herrn/Frau [???:», geboren am [???:», wohnhaft [???:», [???:», ausgewiesen durch amtlichen Lichtbildausweis.

2. Apostille

see Sample of Den Hague Apostille]

[Authentication, Apostille]

1. Authentication

I hereby certify the authenticity of the above signature of Mr. / Mrs. [???: », Born on the [???:», resident [???: », [???:», reported by official photo identification.

2. Apostille

see Sample of Den Hague Apostille]

and you are not competent in German, you will need to satisfy yourself as to the meaning of the document presented to you by the appearer. The text in English is reasonably coherent, but you will notice that the German text is the governing text. The document relates to the change of address for a German company, so it is reasonable to suppose that a German lawyer is involved and has prepared the document in bilingual format. Contacting that lawyer is a sensible course of action, as not only can you obtain that lawyer's confirmation that the English and German texts correspond, but also confirmation that your notarial certificate (based on the sample provided) will work. Your notarial certificate must be in English only, but the declaration itself can remain in bilingual format with the foregoing safeguard in place.

A different problem is posed by the following document, which might be produced to you by Oleksandr Kamyshin, a Ukrainian living in Ireland (again the details of the appearer are fictional):

Д О В І Р Е Н І С Т Ь

Ірландія, м. Дублін

Я, Камишін Олександр Анатолійович 13,10,1977 р-н., що зареєстрований за адресою 80700, Львівська обл. м. Золочів, вул. Бульвар Сквороди 1/12, в даний час тимчасово перебуває на території Ірландії, 22 Форест Хілс, Форест Род, Сордс, Ко. Дублін, К67 Х433

У П О В Н О В А Ж У Ю

Уповноважую, Бурду Олександрю Йосифівну 19,11,1976 р-н. що зареєстрована за адресою 80700, Львівська обл., м. Золочів, вул. Бульвар Сквороди 1/12

Бути моїм представником:

в усіх без винятку установах, на підприємствах, в організаціях, незалежно від їхньої організаційно-правової форми

Та підпорядкування, форм власності та галузевої незалежності, з приводу оформлення моїх спадкових прав на все майно, яке залишилось з приводу смерті мого батька Камишіна Анатолія Дмитровича який помер 18.11.2021р., в усіх судових органах України будь-якої ланки, з усіма необхідними для того повноваженнями, які надані законом позивачу тв/чи потерпілому, відповідачу, третій особі з правом пред'явлення позову; ознайомлення з матеріалами справи, робити витяги, копії з документів, брати участь в судових засіданнях, замовляти проведення експертизи, брати участь у дослідженні доказів, заявляти клопотання та відводи, давати усні та письмові пояснення в судових установах, які займаються розглядом моєї справи, повністю або частково відмовитися від позовних вимог, визнання позову повністю або частково, змінювати підстави або предмет позову, зменшувати або збільшувати предмет позову чи вартість позовних вимог, укладати мирові угоди, оскаржувати рішення суду, оскаржувати дії/бездіяльність посадових осіб, отримувати рішення суду та подавати його на реалізацію, подавати виконавчі документи до відповідних органів для виконання

в державних, громадських, господарських, приватних установах, організаціях незалежно від їх підпорядкування, форма власності, та галузевої незалежності, у тому числі в органах Державної міграційної служби України, контролюючих, правоохоронних органах, в органах нотаріату, відділі реєстрації актів державного стану, в житлово-експлуатаційних організаціях, у відповідному бюро технічної інвентаризації, у відповідному управлінні Центру надання адміністративних послуг, в органах державної фіскальної служби, у відповідному Держгеокадастрі,

архітектурних органах, земельних органах, кадастровому бюро, у виконавчій службі, органах місцевої влади та місцевого самоврядування та інших структурних підрозділах будь-якого рівня та будь-якої направленості, в будь-яких інших організаціях та установах при вирішенні будь-яких питань, що мене стосуються, а також захисту моїх прав та інтересів, сплачувати податки та здійснювати різного виду платежі.

Для чого представнику за цією довіреністю надається право подавати від мого імені заяви та інші документи, одержувати необхідні довідки та будь-які документи що стосується виконання цього доручення, одержати свідоцтво про право на спадщину і зареєструвати упорядковане майно у відповідних органах на моє ім'я, так\або постанову про відмову вчиненні нотаріальної дії, розписуватись за мене, сплачувати державне мито та інші платежі, ведення від мого імені переговорів та попереднє узгодження процедурних питань, подання та підпису усіх документів, відповідно для виконання повноважень, включаючи позовні, апеляційні, касаційні, та інші заяви (скарги), в тому числі заяви про повернення позовної заяви тез розгляду, скарги, клопотання, заперечення, подавати усні та письмові заперечення, відзиви, одержання дозволів, свідоцтв, рішень, а також інших документів що стосується моїх прав та законних інтересів, сплачувати за мене платежі, звертатися з усним та письмовим запитами до всіх органів, а також вчиняти інші юридично значимі дії, пов'язані з цією довіреністю і в межах даних повноважень.

Підпис _____

The appearer understands Ukrainian (which is no guarantee that he has read and understood the document), but if you do not understand that language you will have to take steps to satisfy yourself as to its meaning. There is no English version for you to base this understanding on. If the appearer is content for you to put the text through Google Translate, you end up with this:

DOVIRENIST

Ireland, Dublin

I, Oleksandr Anatoliyovych Kamyshin, born on October 13, 1977, registered at the address 80700, Lviv region. Zolochiv, st. 1/12 Frying Pan Blvd., currently temporarily based in Ireland, 22 Forest Hills, Forest Road, Swords, Co. Dublin, K67 X433

UPONOVAZUY

I authorize Burda Oleksandr Yosifivna, born November 19, 1976. which is registered at the address 80700, Lviv region, Zolochiv, str. Boulevard Skovorody 1/12

Be my representative:

in all institutions, enterprises, organizations without exception, regardless of their organizational and legal form

And subordination, forms of ownership and branch independence, regarding registration of my inheritance rights to all property that remained due to the death of my father Anatoly Dmytrovych Kamyshin, who died on November 18, 2021, in all judicial bodies of Ukraine of any level, with all necessary for and the powers granted by law to the plaintiff, the victim, the defendant, or a third party with the right to file a lawsuit; getting acquainted with case materials, making extracts, copies of documents, participating in court hearings, ordering expert examinations, participating in the examination of evidence, submitting motions and objections, giving oral and written explanations in judicial institutions that deal with my case, in full or partially abandon claims, recognize the claim in full or in part, change the grounds or subject of the claim, reduce or increase the subject of the claim or the value of the claims, enter into settlement agreements, appeal the court decision, appeal the actions/inaction of officials, obtain the court decision and submit it to implementation, submit executive documents to the relevant authorities for implementation in state, public, economic, private institutions, organizations, regardless of their subordination, form of ownership, and branch independence, including in the bodies of the State Migration Service of Ukraine, controlling, law enforcement bodies, in notary bodies, the department of registration of state acts, in housing - operating organizations, in the relevant bureau of technical inventory, in the relevant department of the Center for the provision of administrative services, in the bodies of the state fiscal service, in the relevant State Geocadastre, architectural bodies, land bodies, cadastral bureau, in the executive service, bodies of local government and local self-government and other structural units of any level and any direction, in any other organizations and institutions when solving any issues that concern me, as well as protecting my rights and interests, to pay taxes and make various types of payments.

For which the representative under this power of attorney is given the right to submit applications and other documents on my behalf, to receive the necessary certificates and any documents related to the execution of this mandate, to receive a

certificate of the right to inheritance and to register the ordered property with the relevant authorities in my name, yes\or a resolution on refusal to perform a notarial act, sign for me, pay state duty and other payments, conduct negotiations on my behalf and preliminary agreement on procedural issues, submit and sign all documents, respectively, for the execution of powers, including claims, appeals, cassation, and other statements (complaints), including statements about the return of the statement of claim theses of consideration, complaints, petitions, objections, submit oral and written objections, responses, obtaining permits, certificates, decisions, as well as other documents concerning my rights and legal interests , pay payments for me, make oral and written requests to all authorities, as well as perform other legally significant actions related to this power of attorney and within the limits of these powers.

Signature _____

A few things have gone wrong here, but on the whole a coherent translation has been produced. The title “DOVIRENIST” and the word “UPONOVAZUY” have not been translated as spaces were inserted between the letters in the Ukrainian text, i.e., “Д*О*В*І*Р*Е*Н*І*С*Т*Ь” instead of “ДОВИРЕНИСТЬ”, which Google Translate would have correctly translated as “POWER OF ATTORNEY”, and “У*П*О*В*Н*О*В*А*Ж*У*Ю” instead of “УПОВНОВАЖУЮ”, which would have been correctly translated as “AUTHORIZE”. The appearer and the attorney have the same registered address in Lviv, but Google Translate has provided a literal version of this for the appearer (Frying Pan Blvd.), and a transliteration for the attorney (Boulevard Skovorody), which makes it seem as if they have different addresses. With the appearer’s assistance, these minor matters can be resolved fairly easily. That will enable you properly to add your notarial certificate in English identifying the appearer and attesting his signature.

NOTARIAL ACTS IN THE PUBLIC FORM

When you issue a public-form notarial act, there is no separation between the appearer’s document and the notarial act. A public-form notarial act is narrated in its entirety by the notary.

Public-form notarial acts are most frequently requested in respect of property transactions or inheritance procedures in Spain, but you will also receive draft public-form notarial acts for other countries such as Belgium, Greece, Italy, Mauritius, Mexico, the Netherlands, Poland and Portugal. These drafts may be in English only, bilingual, or wholly in the foreign language.

The risk assessment for issuing a public-form notarial act in a foreign language is different to the risk assessment considered above for private-form notarial acts. You as the notary are narrating the act in full. You can only do this if you are competent in the language or languages in which the act is written. The standard Acknowledgment will not help you in the same way as it does for private-form notarial acts as described above, as paragraph 1 refers to a document being “furnished to you to be notarised”. When a draft public-form notarial act is presented to you, you are asked to complete it and issue the act under your signature and seal, so no document is furnished to you to be notarised, but rather a draft notarial act is furnished to you for completion. The statements for which you bear liability are contained within the public-form notarial act and, if the act is drafted in bilingual format (or wholly in a foreign language), you are liable for those statements in the foreign language. Paragraph 4(b) of the standard Acknowledgment for an appearer acting in a private capacity (paragraph 6(b) of the standard Acknowledgment for an appearer acting on behalf of a company) is not appropriate for a public-form notarial act as it states that “you did not draw up the Document(s)”. By taking the draft public-form notarial act and adopting it as your own, you have “drawn up” the notarial act. The outcome is that you should not issue a public-form notarial act in a language that you do not understand, regardless of the presence or absence of an English version.

SOME PRACTICAL EXAMPLES:

The appearer requesting your notarial services is an Irish citizen of Mauritian origin. A power of attorney is needed for the sale of land in Mauritius and the following draft is presented to you:

2023

SPECIAL POWER OF ATTORNEY

Before Mr. _____, a notary public, of
PERSONALLY CAME AND APPEARED
Mr. Reaz DHORASOO, born in Dublin on the 11/06/1995, holder of a Passport issued by Ireland on the 13/08/2015, bearing No PB7843639 and expiring on the 13/08/2025, a bachelor, a _____, residing at _____,

Who DOES, by these presents, nominate, constitute and appoint to be his true and lawful Special attorney in Mauritius, for the purposes hereafter mentioned:

Mr. Mohammad Noorany ALLYBOCCUS, born at Coriolis Avenue on the 25/07/1969 (Birth Certificate bearing No 479/1969 – Plaines Wilhems/Quatre Bornes/Republic of Mauritius), residing in Mauritius, Roches Brunes.

Who he empowers for him and on his name to manage and administer all his undivided rights and affairs he might have, only in so far it relates to a portion of land of extent of 550.25m2 approximately, situate in the district of Pamplemousses, a place called Montagne longue, in the Republic of Mauritius; the whole morefully described in a deed drawn up by Mr. Jean Paul Huges Didier Maigrot, a Notary Public in Mauritius, duly registered and transcribed in Mauritius Vol TV 5124/62.

IN CONSEQUENCE

- - To transfer/sell with consideration, all his rights in above mentioned property in such form and at a price NOT inferior to THREE MILLION FOUR HUNDRED THOUSAND MAURITIAN RUPEES (Rs3,400,000.-), charges and on such conditions as the attorney shall think fit and proper.

- To credit all sales proceeds directly in his Mauritian Bank Account (Bank Name _____, Bank Account Nos _____).

- To give full acquittance on account of sale price paid as the case might be and to acknowledge full receipt of sale proceeds..

- To cause all demarcations and surveys to be made on said property, to fix and mark out all boundaries, to object to all encroachment and usurpations, to pay and discharge all taxes and rates to make all claims for relief from taxation and for the lowering thereof, to sign and, present to that effect all memories and petitions.

- To consent to all options in view of above sale as per terms and conditions that the attorney shall deem fit and proper, to establish all origins of ownership, to make all declarations, to bind them to all guarantees and to the production of all justifications and "mainlevees" to hand over all and documents or bind the constituent to the remittance thereof, to fix all dates at which enjoyment is to commence, to determine where, in, what way and when the payments of prices as to be effected, to make all delegations and indications as to payment, to make all civil status declarations and others, to declare namely, as the appearer hereby do.

- To represent the constituent in all Government Departments, Town Councils Municipalities and others, in consequence to collect from all post offices, letters and other documents.

- To make all declarations as to the truth of the prices or any other declaration as the case might be.

- To make, execute and sign all deeds and contracts, to elect domicile, to give all powers, to ratify if need be, in the above.

WHEREOF THE PRESENT DEED IS WITNESSED.

Done and made in single original at

On the

And after the reading thereof by the undersigned notary to the appearer, the constituent required to sign by the said notary, have signed the present deed.

Signature: The Constituent

Signature: The Notary

Nota: This power of Attorney must be signed in the presence of a notary public, whose signature must be duly legalized by the competent authority, for the validity of the document in Mauritius (i.e. by the Department of Foreign Affairs, by affixing thereon the Apostil as per The Hague Convention of the 5th October 1961).

This is a draft notarial act in the public form. We know that it is in the public form because the act starts by reciting the appearance of Mr Dhorasoo before the notary and records the appointment of the attorney in Mauritius and the authorities being conferred in narrative form, ending with confirmation of the valid execution of the power of attorney.

There are some blanks to be filled in and some of the language is not conventional English, but this is a draft prepared in an English-speaking jurisdiction and the text can be adopted without substantial amendment. As the notary adopting this draft, you will be responsible for the statements that are contained therein, which comprise identifying the appearer and accurately recording the appearer's intention to appoint the named attorney and confer the authorities that are listed, and finally confirming the due execution of the deed.

By contrast, if the appearers requesting your services are dealing with an inheritance procedure in Spain, the draft public-form notarial act will almost invariably be in bilingual format, for example:

IN THE TOWN OF _____ on the _____ day of _____ two thousand and twenty three, before me, Mr./Mrs. _____

_____, Notary Public residing and practising in the said town with the right according to the law of the place to edit and authorise deeds and other documents that have effect in foreign states in the language and in the way that conforms with its laws,

A P P E A R S

MR. DAVID JOHN CUSACK, born on the day 5th October 1962 in Cork, Ireland, of legal age, married, company director, of Irish nationality, residing at Killeagh, 14 Green Road, Carlow, R93 Y890, Ireland, with passport number PA7304700.

MRS. FIONA JANE ALLGOOD, born on the day 19th July 1965 in Valletta, Malta, of legal age, divorced, nurse, of Irish nationality, residing at 43 Fahy Gardens, Loughrea, Co. Galway, H62 VY74, Ireland, with passport number PA4639093.

MRS. JAQUELINE ANNE FITZGERALD, born on the day 17th June 1959 in Haddenham, United Kingdom, of legal age, widowed, retired, of Irish nationality, residing at Boxtree Cottage, Ballinatone Upper, Rathdrum, Co. Wicklow, A67 EC97, Ireland, with passport number PB0981046.

MRS. STEPHANIE ELEANOR DELANY, born on the day 25th July 1961 in Dublin, Ireland, of legal age, married, nurse, of Irish nationality, residing at Apartment 2, The Church, Knockroe, Passage East, Co. Waterford, X91 X274, Ireland, with passport number PA6810856.

The appearers have identified themselves by showing to me their passports, copies of which are included in this document.

I certify that the appearers intervene in their own name and right and have, in my judgement, the necessary legal capacity to grant the present deed of Power of Attorney and in their virtue,

T H E Y G R A N T

sufficient and ample power, as may legally be required and necessary, including that of self-contracting, in favour of Mr. JUAN CARLOS CABEZA LÓPEZ, of legal age, lawyer, divorced, residing in Parcela 322, Nueva Hacienda Dos Mares, 30380 La Manga del Mar Menor, Cartagena, Murcia, and with Spanish Identification Card number 17.123.382-X, Mrs. MARTA MARÍA GUARDIOLA MARTINEZ, of legal age, single and residing in Calle Ángel Bruna, nº 13, 30203 Cartagena, Murcia, and with Spanish Identification Card number 22.234.508-K, Mrs

EN LA CIUDAD DE _____, a _____ de _____ dos mil veintitres, ante mí el infrascrito, D./Dña. _____

_____, Notario Público con vecindad y ejercicio en esta Capital con derecho según la Ley del lugar para redactar y autorizar escrituras y otros documentos que hayan de surtir efecto en Estados extranjeros en el idioma del respectivo país y en la forma que se conforme a sus leyes,

C O M P A R E C E N

D. DAVID JOHN CUSACK, nacido el día 5 de octubre de 1962 en Cork, Irlanda, mayor de edad, casado, director, de nacionalidad irlandesa, domiciliado en Killeagh, 14 Green Road, Carlow, R93 Y890, Irlanda, con número de pasaporte PA7304700.

DÑA. FIONA JANE ALLGOOD, nacida el día 19 de julio de 1965 en la Valeta, Malta, mayor de edad, divorciada, enferma, de nacionalidad irlandesa, domiciliada en 43 Fahy Gardens, Loughrea, Co. Galway, H62 VY74, Irlanda, con número de pasaporte PA4639093.

DÑA. JAQUELINE ANNE FITZGERALD, nacido el día 17 de junio de 1959 en Haddenham, Reino Unido, mayor de edad, viuda, jubilada, de nacionalidad irlandesa, domiciliada en Boxtree Cottage, Ballinatone Upper, Rathdrum, Co. Wicklow, A67 EC97, Irlanda, con número de pasaporte PB0981046.

Dña. STEPHANIE ELEANOR DELANY, nacida el día 25 de julio de 1961 en Dublín, Irlanda, mayor de edad, casada, enferma, de nacionalidad irlandesa, domiciliada en Apartment 2, The Church, Knockroe, Passage East, Co. Waterford, X91 X274, Irlanda, con número de pasaporte PA6810856.

Les identifico por medio de sus pasaportes que me exhiben y cuyas copias incorporo al presente documento.

Doy fe de que los comparecientes intervienen en su propio nombre y derecho y tienen a mi juicio, la capacidad legal necesaria para otorgar la presente Escritura de Apoderamiento y en su virtud,

O T O R G A N

poder tan amplio y bastante como en derecho se requiera y sea menester, incluso para autocontratar, a favor de D. JUAN CARLOS CABEZA LÓPEZ, mayor de edad, abogado, divorciado, domiciliado en Parcela 322, Nueva Hacienda Dos Mares, 30380 La Manga del Mar Menor, Cartagena, Murcia, y con nº de DNI 17.123.382-X, de DÑA. MARTA MARÍA GUARDIOLA MARTINEZ, mayor de edad, soltera y con domicilio en Calle Ángel Bruna, nº 13, 30203 Cartagena, Murcia con nº de DNI 22.234.508-K, Dña. GALINA PAREDES SERRANO, mayor de edad, casada y con domicilio en Plaza

GALINA PAREDES SERRANO, of legal age, married and residing at Los Molinos Marfagones, Cartagena, Murcia, and with DNI number D.N.I 22.345.999-V and “INDEPENDENT CONSULTANTS, S.L.” of Spanish nationality, with fiscal address Plaza Cavanna, Local 8, 30380, La Manga del Mar Menor, Cartagena, Murcia, and with CIF number B30775456 that in their name and representation, and jointly and severally, and although there is a conflict of interests or be given the legal concept of self-dealing with reference to assets in Spain, they may exercise the following acts and

FACULTIES

1a) To intervene in inheritances, testate or intestate, in those which the appearers have an interest, accepting or renouncing to them simply or with the benefits of the Law; to intervene in declaration of heirs; to accept legacies, name depositaries, valuers and accountants; to approve inventories, divisions, liquidations and valuations including those of marital communities; to compromise to differences; to approve the adjudication in total or in part payment; to pay or to receive amounts due to the excess or default in the adjudication, and to take possession of the assets that have been adjudicated.

1b) To SELL to the person or persons, physical or juridical, that they have deemed suitable, for the price and with the terms, determinations, conditions, guarantees and other stipulations that he freely agrees, in total or in part, any type of funds and properties, including real or personal property rights, to pay payments, cash or in instalments

2) To open, to cancel, to close, to continue, to arrange, freeing and emitting cheques, promissory notes, orders of payment, transfers, dispositions of all types of current accounts, of saving, investment, including personal plans, investment funds of savings, and all types of banking products. Also, to buy and to sell shares, stocks, bonds, obligations, and all kind of banking products.

And all the above in any bank/saving organisation, such as banks/building societies.

To request cheque books or promissory notebooks and banker's drafts.

To request and obtain the necessary tools to open and access accounts via the Internet and ATM machines, including credit and / or debit cards and all necessary passwords, access codes and electronic signatures to be provided by the corresponding banking entities.

Provide consent and exercise any right recognized by the legislation on data protection, both in the European Union Regulation on the subject (General Data Protection Regulation, applicable from 25th May 2.018) and in the internal Spanish regulations on it.

3) In the exercising of the preceding faculties, they may grant and sign any number of public or private documents that may be necessary or convenient,

Puerto Leda, nº 11, 30393 Los Molinos Marfagones, Cartagena, Murcia y con DNI nº 22.345.999-V y para que en su nombre y representación, “INDEPENDENT CONSULTANTS, S.L.”, de nacionalidad española, con domicilio social en Plaza Cavanna, Local 8, 30380, La Manga del Mar Menor, Cartagena, Murcia, con CIF número B30775456 y con carácter solidario, y aunque exista oposición de intereses, se dé la figura jurídica de la autocontratación o múltiple representación y con referencia a sus bienes en España, puedan realizar y ejercer los siguientes actos y

FACULTADES

1a) Intervenir en herencias testadas o intestadas en que tengan interés los otorgantes, aceptándolas o renunciando a ellas simplemente o con los beneficios de la Ley; intervenir en declaraciones de herederos; aceptar legados, nombrar depositarios, peritos, y contables; aprobar inventarios, divisiones, liquidaciones y tasaciones, incluso de sociedades conyugales; transigir diferencias; aprobar la adjudicación en pago o para pago; abonar o percibir cantidades por exceso o defecto de adjudicación, y tomar posesión de los bienes que se les adjudiquen.

1b) VENDER a la persona o personas físicas o jurídicas que tengan por conveniente, por el precio y con los plazos, condiciones, determinación, garantías y demás estipulaciones que libremente concierte, en todo o parte, todo tipo de bienes muebles e inmuebles o derechos reales o personales sobre los mismos, cobrar/pagar, al contado o a plazos.

2) Abrir, cancelar, cerrar, continuar, y disponer, librando, endosando y emitiendo cheques, pagarés, órdenes de pago, transferencias y reintegros, disposiciones de todo tipo, de cuentas corrientes, de crédito, de ahorro, de inversión, incluidos fondos de inversión, planes personales de ahorro, y todo tipo de productos bancarios. También comprar y vender acciones, obligaciones, bonos, valores y todo tipo de productos bancarios.

Y todo lo anterior, en cualquier entidad de ahorro, como cajas, bancos, tanto públicos como privados.

Solicitar talonarios de cheques o pagarés y cheques bancarios.

Solicitar y obtener las herramientas necesarias para disponer de cuentas via Internet y/o cajeros automáticos, incluso tarjetas de crédito y/o débito y las claves a ser proporcionadas por las correspondientes entidades bancarias.

Prestar el consentimiento y ejercitar cualquier derecho reconocido por la legislación sobre protección de datos, tanto en el Reglamento de la Unión Europea sobre la materia (Reglamento General de Protección de Datos, aplicable a partir del 25 de mayo de 2.018), como por la normativa interna española sobre la misma.

3) En el ejercicio de las facultades que anteceden, podrán otorgar y firmar cuantos documentos públicos

including deeds of correction, addition, rectification and ratification if deemed necessary, and to rectify and complete the description of the property.

5) Contract, continue, change, cancel insurance policies especially relating to funds and properties.

6) To request copies of the present Power of Attorney or any Notary document in any Notary Public office, and also last will certificates, cadastral certificates and of any other type.

7) To appear before any official Body of the State, Province, Municipality, Autonomous Community, like Tax Department, Banks, Institutes, Town Halls, Deputations, Mutualities, Police Stations and before any particular office in all type of matters concerning the appearers, including offices of electricity, gas, water and telephone, including the application of the Identification Number of Foreigners (NIE) and non- residency certificates.

8) To appear before the dependencies of the Tax Ministry, to the effect of negotiating and to liquidate the taxes yielded in consequence of the transmissions that are referred to in this present Power of Attorney, collecting or paying the amounts that result to his favour or in contrary and carrying out the administrative acts, including appeals, that maybe necessary or convenient in the interests of the appearers.

9) To request and manage as many public and / or private documents as necessary or appropriate to obtain the Electronic Certificate from any Official Certifying authority.

10) Appear before the State Tax Administration Agency or before other delegated registry offices of bodies, organisms or entities that exercise public functions, as well as before the offices or registries designated by the following service providers certification, to provide documentation and sign as many documents as necessary to obtain the user certificate for relations with the Administration.

11) Requesting, downloading, installing, renewing, suspending, revoking and using any electronic signature certificate issued by the “Fábrica Nacional de La Moneda y Timbre de la Casa Real de la Moneda” or by any other certification service providers, and any other electronic certificates that may subsequently arise in accordance with the state of the art.

12) Use its own electronic signature certificate, or alternatively, the digital certificate of the company itself, to carry out by telematic means all the procedures and actions in the electronic headquarters of the State Tax Administration Agency, and before: the General

y privados sean necesarios o convenientes, incluso escrituras de obra nueva, de rectificación, adición, subsanación o ratificación si fuere necesario, y rectificar y completar la descripción de la finca.

5) Concertar, seguir, rectificar, cancelar pólizas de seguros sobre todo de tipo de bienes muebles e inmuebles.

6) Pedir copias del presente poder o de cualquier documento notarial en cualquier Notaría, así como de certificados de últimas voluntades, certificados catastrales y de cualquier otro tipo.

7) Comparecer ante cualquier Entidad del Estado, la Provincia, el Municipio, Comunidad Autónoma, como Delegaciones de Hacienda, Cajas, Institutos, Ayuntamientos, Diputaciones, Mutualidades, Comisarías de Policía y ante oficinas particulares de suministro eléctrico, gas, agua y teléfono, y para todo tipo de gestiones que conciernan a los poderdantes, incluido solicitud del Número Identificación Extranjeros (NIE) y certificación de no residencia.

8) Comparecer ante las dependencias del Ministerio de Hacienda, al efecto de tramitar y liquidar los impuestos devengados como consecuencia de las transmisiones a que se refiere el presente poder, cobrando o pagando las cantidades que resulten a su favor o en su contra y realizando los actos administrativos, incluso recursos, que sean necesarios o conveniente a los intereses del poderdante.

9) Solicitar y gestionar cuantos documentos públicos y/o privados sean necesarios o convenientes para la obtención de Certificado Electrónico de cualquier autoridad certificadora.

10) Personarse ante la Agencia Estatal de la Administración Tributaria o ante otras oficinas de registro delegadas de órganos, organismos o entidades que ejerzan funciones públicas, así como ante las oficinas o registros que designen los prestadores de servicios de certificación, para aportar la documentación y firmar cuantos documentos fueran necesarios, para la obtención del certificado de usuario para las relaciones con la Administración.

11) Solicitar, descargar, instalar, renovar, suspender, revocar y utilizar cualquier certificado de firma electrónica emitido por la Fábrica Nacional de La Moneda y Timbre de la Casa Real de la Moneda o por otros prestadores de servicios de certificación, y cualesquiera otros certificados electrónicos que pudieran surgir con posterioridad de conformidad con el estado de la técnica.

12) Utilizar su propio certificado de firma electrónica para realizar por medios telemáticos todos los trámites y actuaciones en la sede electrónica de la Agencia Estatal de la Administración Tributaria, y ante: la

State Administration, Autonomous Communities, Local Entities, Public Bodies and any other entities of the Administration.

The Power of Attorney that for all of this deemed necessary, including its substitution, in total or in part, without any limitation, granted to the said attorneys-in-fact.

SO THEY SAY AND GRANT, and after the reading of this instrument to them with which I the Notary proceeded with the agreement of the appearers, they ratify its contents and they sign with me, all of which I, the Notary, certify.

Administración General del Estado, Comunidades Autónomas, Entidades Locales, Organismos Públicos y cualesquiera otras entidades de la Administración.

El poder que, para todo ello, fuere necesario, incluso la sustitución de este poder en todo o en parte, se confiere a dichos mandatarios, sin limitación alguna.

ASÍ LO DICEN Y OTORGAN y previa lectura del presente instrumento a que yo el Notario procedí por acuerdo de los comparecientes, éstos se ratifican en su contenido y firman conmigo de todo lo cual yo el Notario doy fe.

This draft notarial act is in Spanish with an English translation. You may spot some obvious issues, for example the absence of a numbered paragraph 4. If you are to adopt this notarial act as your own, you must be able to understand the Spanish text, eradicate any errors in the text, and take liability for the statements that are contained therein, just as you would have done for the Mauritian power of attorney considered above. The English translation may be helpful to you in understanding the Spanish text, but you cannot rely on it blindly.

This does not mean that you must be completely fluent in Spanish to issue a bilingual English and Spanish public-form notarial act. There is no avoiding the liability for the statements contained in the Spanish text, but if you have taken adequate steps to understand the Spanish to the point where you understand your liability, you can properly issue the act. If you cannot achieve that level of understanding independently, you can seek help from a colleague who is competent in Spanish and may be willing to guide you, or – and as above the risks of mistranslation must be considered – with the consent of the appearer an online translation service might be used to help you verify your understanding of the Spanish text.

If you are unable to achieve the level of understanding necessary to accept liability for the statements in the foreign language, you should decline the instruction and refer the appearer to a notary who can properly issue the act.

SUMMARY

Dealing with documents in foreign languages is a regular feature of notarial practice and with appropriate safeguards most requests can be accommodated safely, but if you are asked to issue a notarial act in the public form, make sure that you understand fully the act that you are asked to issue. If the act is fully or partially in a foreign language, you must personally understand it.



Iain Ostrowski-Rogers is an internationally recognised specialist for his notarial work in relation to the countries of Central and Eastern Europe. He qualified as a Scrivener Notary in 2000 and has been consulting with De Pinna since 2019.

Iain completed his M.A. in Modern and Medieval Languages at Clare College, Cambridge University.

He is on the court of the Scriveners Company and acts as the Company's Examinations Officer. In addition, Iain is an academic consultant to the Notarial Practice Course at University College London, the course director of the Notarial Professional Course run by the Faculty of Notaries Public in Ireland and provides tuition in notarial practice and acts as an examiner in Hong Kong, Guernsey and Jersey.

Iain has committed his career to raising standards within the notarial profession in England and Wales and other jurisdictions with similar systems and leading by example as a dedicated Scrivener Notary.

A NEW ZEALAND EXAMPLE OF FRAUD AND POSSIBLE LAUNDERING BY TONY COUPE NZ NOTARY



Recently I attended on an employee from an Immigration Consultancy firm situated close to my office. The employee explained that their company was acting as agent for a person in China and wanted a letter from an Institute of Technology notarised to confirm the letter's authenticity.

It was purportedly signed by a person described as 'Administrator, Information & Enrolments Centre'. The letter referred to a refund of tuition fees in the sum of \$NZ55,880. I put a call into the said Administrator's office, but they were unavailable. The person I spoke to confirmed that my appearer was an employee at the Institute. Because the Institute was based near my office and their employee supplied me with their passport ID and Proof of NZ Address, I decided to notarise / authenticate the letter, as I was reasonably comfortable with the document. After my appearer left my office, the Administrator returned my call and asked for a copy of the letter which I emailed to them. They came back promptly to tell me that the letter was not signed by them and it was a fake.

I immediately phoned my appearer and told them the document was not genuine, asking them to:

1. Send me an undertaking not to forward the notarised letter to the person in China and not to take copies of it; and
2. Immediately return the notarised letter to my office.

They immediately provided the undertaking as requested by email and assured me that the Institute had not sent a copy to their 'client'. The next day they delivered the original notarised letter back to my office. When I looked at the letter again, I realised that, apart from being undated, there were one or two grammatical errors in the letter which ought to have alerted me to a possible fraudulent document.

The lesson here is that wherever possible double check any document / letter issued by an academic institute by contacting that institute before releasing the notarised document. I speculate that the purpose of document was to justify the deposit of a substantial amount of money into a bank account which was being questioned by Chinese Authorities - a money laundering exercise?



Tony Coupe
Notary Public
Auckland, New Zealand

Tony, recently retired partner in the firm, is a Notary Public and is available, on appointment, to provide notary services. Tony was born and schooled on the North Shore in New Zealand. In 1982, he set up his own practice with four active files and thirty deed packets (after leaving Sheffield Young & Ellis in Auckland). This turned out to be Tony's biggest work accomplishment to date. He built up a vibrant practice serving the North Shore, with a team of twenty people based in Takapuna, before merging with McVeagh Fleming in 2007.

THE CONFERENCE THAT WAS NOT



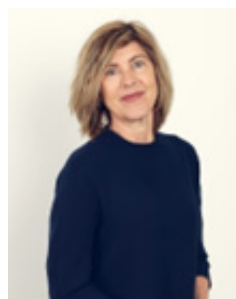
Don Thomas, New Zealand Notary, in Amsterdam, adapting with resilience to the unfortunate cancellation of a notary conference to go canal boating, take a trip to Seville/Gibraltar and stay at the Barrel Hotel in Oporto!

SECURITY FEATURES OF NEW ZEALAND PASSPORTS

Practice Note 19 – Security features of New Zealand passports

One method of checking the authenticity of a New Zealand passport is to run your finger over the map of New Zealand on the inside back cover. The map should be slightly rough, raised and bumpy. This tactile aspect is created by raised intaglio printing, which is apparently extremely difficult to counterfeit, and is one of a number of security features of New Zealand passports. Many recently issued New Zealand passports (from 2023 onward, and increasing in number as

stock levels of the previous passport format are utilised) also contain a little green fern, printed on the photo page with thermochromic ink – a special dye that changes colour depending on the temperature. Place your thumb over the fern, warming it up to body temperature. If it's the real deal, the fern will disappear.



JULIE HUTTON
NOTARY PUBLIC
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Julie is a Notary Public and an enrolled Barrister and Solicitor, and is based in Christchurch. A council member of the Council of the New Zealand Society of Notaries, writing many of its excellent Practice Notes.



With best wishes.
Anthony

Anthony W. Northey
M.A., LL.M. (Cantab.)
M.B.A., M.C.I.M., T.E.P.
Notary/Notary Public

PRACTICE NOTE: NOTARISING AMERICAN DOCUMENTS SENT FROM THE USA



SYNOPSIS

Victorian notaries are often asked by clients to notarise personal and commercial documents, originating from a variety of American sources, that are required for use in the United States.

For the most part, the task is not difficult. However, typically instructions received from the USA are based on American notarial practice and are geared towards American notaries public. If strictly followed, those instructions give rise to various issues and practical problems for Victorian notaries that are discussed in this Practice Note.

This Practice Note also includes information about obtaining official copies of U.S. Vital Records and about U.S. Tax Identification Numbers.

Disclaimer

:

The purpose of this Practice Note is to provide information to assist Victorian notaries when they are requested by clients to notarise documents sent from the United States of America that are required for commercial and personal purposes in the USA.

This Practice Note is not and must not be construed as being the provision of legal or other professional advice to anyone. If legal or other professional advice is warranted or required, the service of an appropriate professional should be sought.

This Practice Note is not and does not purport to be a complete and exhaustive treatise on its subject matter. It may contain errors and omissions and information that was accurate at the time of writing but has subsequently changed or become outdated.

To the full extent allowed by law, the author, the Society of Notaries of Victoria and everyone involved in the publication or distribution of this Practice Note have no liability to any person who reads or uses it or who directly or indirectly relies in any way on any part of the text.

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PRACTICE NOTE

NOTARISING AMERICAN DOCUMENTS RECEIVED FROM THE USA

Peter Zabrud, AM, RFD, FSNV, Dist.FANZCN

A PROLOGUE

At any given time, an unknown but significant number of American expatriates living in Victoria, other Victorian residents and various Victorian public and private sector entities and enterprises are involved in matters and transactions in the USA that require documents originating from American sources to be notarised in Victoria for subsequent use in the United States.

AMERICAN CORRESPONDENTS

In this Practice Note, “**American Correspondent**” means a person in the USA who has sent one or more documents from the USA (usually accompanied by instructions as to how to complete and notarise the documents) to a Victorian notary’s existing or prospective client for notarisation and return to the USA.

Depending on the origin of the document(s) to be notarised, an American Correspondent is likely to be:

- a judicial officer’s associate or a court staff member;
- an employee of a bank or title insurer;
- a federal, state, county or municipal official; or
- a private sector professional, such as a lawyer, a paralegal, an accountant, an investor advisor, a mortgage broker, a real estate agent or an insurance consultant.

Most American Correspondents are well-meaning. All of them are acquainted with the ubiquitous notarisation requirements of their respective states or territories. Unfortunately, very few are familiar with non-American notarial practice and non-American notarisation of U.S documents for production and use in the United States; thereby giving rise to the issues canvassed in this Practice Note.

COMMUNICATION

Ordinarily, **discussion and communication** about a U.S notarisation request **should be between the client and the client’s American Correspondent** and not between the Notary and the Correspondent. **It is for clients to communicate directly with their American Correspondents.**

If a client (and through the client, an American Correspondent) does not take the advice given [in writing] by the Victorian notary in relation to one or more aspects of a U.S notarisation request, the notary may properly decline to intervene. The client will then be obliged to make alternative arrangements.

RETURNING NOTARISED DOCUMENTS TO THE U.S.A.

As a rule a Victorian notary’s obligation is to arrange for notarised [and if applicable, apostilled] documents to be returned to the client as soon as is reasonably practicable. **Returning original notarised documents to the USA is a matter for clients.**

Particularly since COVID-19 has disrupted deliveries, Australia Post and the likes of FedEx and DHL, as well as postal authorities and local couriers in the United States, are not as reliable or efficient as they were in pre-pandemic times.

However good or important the client or however helpful a notary wishes to be, **notaries are well advised not to become involved in sending original documents abroad.**

Doing so can result in daily emails and telephone calls from anxious clients and their American Correspondents chasing the whereabouts of [suddenly] “urgent” documents; often blaming the notary for perceived delays and pressuring the notary to take [impossible] steps to hurry the delivery.

SCANNING NOTARISED DOCUMENTS TO THE USA

Given the time it currently takes DFAT to process Applications to affix Apostilles to documents and the time it takes to return notarised documents to the USA, it is always good practice for the notary to scan signed and notarised documents to the client to, in turn, scan them to the American Correspondents.

Particularly when told of the expected delay in receiving original documents, most American Correspondents and the institutions they represent will treat scans as “original” documents pending the arrival of the originals at their American destination.

AS A GENERAL RULE – FOLLOW THE AMERICAN CORRESPONDENT’S INSTRUCTIONS

For the most part, notarising documents emanating from the United States is not difficult. Generally speaking, instructions for notaries received from clients’ American Correspondents are simple, to the point and easy to comprehend. **As far as is possible, instructions should be followed, but notaries must always take care when doing so.**

Almost always, instructions are geared towards American notaries public and American notarial practice. To the extent that instructions are meant to be followed by foreign notaries, there is an implicit underlying assumption that all foreign [common law] notaries are of the same ilk as their American namesakes and that all foreign [common law] notarial practice is the same as American notarial practice.

Often, if the instructions are strictly followed, problems arise. Care must always be taken by Victorian notaries not to break fundamental rules of good Victorian notarial practice when undertaking notarisations for America as instructed.

Fortunately, on being notified of a particular problem or difficulty, most American Correspondents readily understand the concern(s) raised and typically, accept the solution(s) recommended by a Victorian notary to resolve the problem or overcome the difficulty.

SUGGESTIONS TO ENGAGE THE SERVICES OF A U.S NOTARY

Every so often, especially in relation to home loan and real estate closing documentation, an American Correspondent will suggest to the client that rather than approach a local [Victorian] notary, it would be preferable to engage the services of a U.S notary to notarise the documents sent from America.

Suggestions of that kind sometimes have merit. They are usually made in good faith in the belief that a foreign notary may not be up to the task and that a U.S notary would likely have the necessary expertise and experience to properly carry out the notarisation(s).

If the client is inclined to take up the suggestion, it is not a matter for a client or a Victorian notary to search for and find a qualified U.S notary public or to make and supervise arrangements for Remote Online Notarisation (“RON”).

The client should respond to the American Correspondent and request that person to:

- find an appropriate U.S. notary public who is lawfully able to conduct a RON with the client;
- make the necessary administrative arrangements with an acceptable commercial RON Service Provider; and
- confirm that the American Correspondent or his or her employer will cover all necessary costs and expenses.

AMERICAN “NOTARIAL ACTS”

In almost every U.S jurisdiction, a notarial act is a function which a notary is authorised to perform as opposed to an instrument or statement which records that which the notary certifies or has done. The state of Louisiana and the Commonwealth of Puerto Rico are the two exceptions. (1)

(1) Unlike a number of states which were once administered by civil law colonial powers, both Louisiana and Puerto Rico continue to follow their respective French and Spanish antecedents and make the distinction between notarial acts on the one hand and the powers and duties of notaries on the other. See generally, LA Rev Stat Ann (West) Title 35, Notaries Public and Commissioners and Laws of Puerto Rico Title 4, Chapter 101, Puerto Rico Notarial Act.

ACKNOWLEDGEMENTS

The quintessential notarial act in the United States is the taking of an “acknowledgement” which is formal and official evidence of the proper execution of an instrument.

An acknowledgement is:

A notarial act in which a notary public certifies that a signatory, whose identity is personally known to the notary public, or proven on the basis of satisfactory evidence has admitted, in the notary public’s presence, to having voluntarily signed a document for its stated purpose. (2)

An acknowledgement also means:

A declaration by a person that the person has executed an instrument for the purposes stated therein and if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of a person or entity represented and identified therein. (3)

An acknowledgement must be distinguished from an attestation, which is the act of witnessing the execution of a document and then signing the document as a witness. When taking acknowledgements, American notaries usually do not act as witnesses to the signing of documents. If formal witnessing is required, that task typically falls to an independent person other than a notary. (4) In Victoria, a notary will often also act as a witness to the signing of a document to be notarised.

Documents sent from the United States that are required for U.S domestic purposes, typically include pre-printed notarial acknowledgement certificates in locally prescribed forms. Forms vary marginally as between U.S jurisdictions, but subject to the various matters discussed below, U.S prescribed forms may be completed, signed and sealed by Victorian notaries without being supplemented.

Most U.S states and territories have provision in their legislation to the effect that **an “out of-state” notarial certificate may be in a form prescribed or used in the jurisdiction in which the “out-of-state” notary holds office.** Therefore, when occasionally a document required for U.S domestic purposes does not include or is not accompanied by a pre-printed notarial certificate, an appropriate “Victorian” certificate may be prepared and appended to or endorsed upon the document.

If a Victorian certificate is used, it must always either

- bear an appropriate venue caption (see below); or
- be absolutely clear from its terms that it has been prepared and completed in the Commonwealth of Australia, in the State of Victoria and in the specific city or town where the notary practices.

COMPLETING AN ACKNOWLEDGEMENT CERTIFICATE

All U.S acknowledgement certificates must be carefully, truthfully and accurately completed. Filling out a certificate dishonestly or indolently may not only be grounds for a negligence claim, but in some cases, may amount to misconduct.

First and foremost, people who acknowledge their signatures (“signatories”) must actually appear before the notary. In most U.S jurisdictions “in person” appearance is required. Latterly, appearance by audio-visual link has been approved in a number of states and territories. An acknowledgement cannot be taken by telephone or email.

In Victoria, “in person” appearance is the preferred option. By virtue of the amendments recently made to relevant Victorian legislation by the Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021 (Vic), appearance by audio-visual link is allowed for various purposes. (5) If a signatory appears before a Victorian notary by audio visual link, it is usually acceptable for the notary to adjust an acknowledgement certificate by making it clear that the signatory “lawfully appeared [before the notary] by audio-visual link pursuant to applicable Victorian legislation”.

(2) Conn Gen Stat §3-94a Notaries Public, Definitions.

(3) Ill comp Stat Ch 5 §312/6-101 Definitions.

(4) In some U.S jurisdictions, it is possible to “prove” a deed as an alternative to obtaining a signatory’s acknowledgement. The procedure is sometimes called “probatng” a deed and involves one or more of the attesting witnesses making an affidavit that the person whose signature was witnessed acknowledged the instrument in the presence of the affiant(s) and any other attesting witness(es). See eg Col Rev Stat §38-30-136(2018).

It is always critical that signatories be properly identified by the notaries before whom they appear. Save when a RON Service Provider is involved, signatory identification is a notary's personal responsibility and must never be carried out by a third party. (6) In most cases, reference is made in the notarial certificate as to how a signatory has been identified. For example, a formulation such as the person is "known to me or satisfactorily proven to be [the named signatory]" is normally seen.

For a signatory to be "known to", a U.S notary [or indeed to a Victorian notary], a passing acquaintance with the person or a minor social interaction over a short period is insufficient. The test for "personal knowledge" of a signatory in Arizona, for example, is instructive. An Arizona notary must have

Familiarity with [the signatory] resulting from interactions with that individual over a sufficient time to eliminate reasonable doubt that the individual has the identity claimed. (7)

Where applicable, a Victorian notary should properly adopt that test.

In several U.S jurisdictions, "satisfactory" proof of identity may be provided by the oath or affirmation of a credible witness known to the notary. However, overwhelmingly in America, proof of identity is by the signatory producing a driver license or other government token that includes the signatory's photograph and an embedded signature.

In Victoria, where notarial identification standards are more rigorous than those in America, a "100 point" ID check involving at least one "70 point" government issued token such as an Australian passport, is normally required to satisfactorily prove identity. The oath or affirmation of a credible witness is very much a lesser method.

Documents signed by a signatory acting in a representative capacity such as an attorney in-fact pursuant to a power of attorney, or as a trustee or an officer of a corporation can sometimes be problematic especially where the person or entity purportedly being represented is living or located in the United States. Mostly signatories are able to produce relevant documents proving their status, however obtaining official documents from America in relation to corporations is not as easy as obtaining similar documents from ASIC in Australia.

A Victorian notary cannot properly complete an acknowledgement certificate that says that the signatory is "known to me to be", for example, "the President of XYZ Corporation" without sighting documentary proof of the signatory's status. Where necessary, the problem can be overcome if the signatory merely acknowledges his or her specific representative status. The acknowledgement certificate may then be amended appropriately. (8)

"MY APPOINTMENT IS NOT LIMITED BY TIME"

Other than in Louisiana and Puerto Rico, American notaries are commissioned for fixed, renewable terms (9) and must always include their commission expiration dates on all their notarial certificates under or near their signature. A notarisation is invalid if performed when a commission is no longer on foot. Specifying a commission expiry date is sacrosanct.

Most American Correspondents and the entities many of them represent take the view that in the common law world American notarial norms are touchstones and the specification of a commission expiry date on a notarial certificate is of the essence. Therefore, it is not surprising that when an American style notarial certificate is to be completed by a foreign [common law] notary, it is expected that the foreign notary's "commission" is likely to be for a limited, renewable period and that the expiry date will be included in the certificate.

(6) In the United States RON has become a process conducted and effectively controlled by a handful of large nation-wide commercial service providers (SPs) that advertise and deal directly with the public. Among other things, an SP usually arranges the services of its preferred commercial "identification" service provider to investigate and confirm a signatory's identity. In practice, in the RON process, U.S notaries have been reduced to minor but technically necessary cogs in the commercial wheel, and basic tenets of good notarial practice have fallen by the wayside.

(7) Ariz.Rev.Stat Title 41.Article2.Notaries Public §41-311.I.Definitions.10

(8) A Victorian notary has no liability for any false or misleading acknowledgement by a signatory that the notary certifies.

(9) The average term is four years. Notaries in Louisiana and Puerto Rico hold office so long as they remain qualified to do so, which is effectively until they retire as legal practitioners.

Two of the leading notary organisations in the USA, the American Society of Notaries (“ASN”) and the National Notary Association (“NNA”) both incorrectly assert that “SS” is an abbreviation for the [Latin] word scilicet which they say means “namely” or “in particular” or “to wit”. (11)

Even though the usual abbreviations for scilicet are sc and scil, (12) the assertion propounded by the ASN and the NNA has found its way into the manuals and materials published for notaries by more than a few American states. (13)

“SS” is probably derived from a decorative flourish.

According to the editor of Black’s Law Dictionary, Professor Bryan A. Garner, it is likely that SS was merely a decorative flourish found in a 17th century book of English pleading precedents which:

an early [unknown American] formbook writer incorporated ... into his forms and ever since it has been mindlessly perpetuated by one generation after another. (14)

U.S “HOME LOAN” DOCUMENTS

Of all the everyday U.S transactions, “home loans” and the refinancing of home loans seem to generate the most paper – significant parts of which call for a notary to administer oaths, take acknowledgements and complete an array of notarial certificates.

A sheaf of between 200 and 300 pages is not uncommon. As an indicator, in January 2022, a Texas home loan refinancing transaction involving an American expatriate client temporarily living in Melbourne, required the Victorian notary to print-out and peruse 269 pages emailed to the client by his mortgage broker in Dallas.

In addition to instructions for the notary and [compulsory] disclosure documents by the client’s broker and the Lender, the document package included:

- 42 documents to be initialled and simply signed by the client (several of which were directed to “Fannie Mae”) (see below); and
- the following 17 documents requiring notarial intervention, viz:
 - the client’s acknowledgement of receipt of Wire Transfer instructions; o an Identity Fraud Prevention Affidavit;
 - a further Identity Fraud Prevention Affidavit;
 - a Line of Credit Pay off Affidavit;
 - a Texas Borrower’s Affidavit;
 - a Residential Real Property Affidavit;
 - a Non Homestead Affidavit;
 - a Limited Power of Attorney;
 - a Signature Affidavit and AKA (Also Known As) Statement;
 - an Assignment and Transfer of Lien;
 - a Designation of Homestead and Non-Homestead Affidavit;
 - a Deed of Trust;
 - an Occupancy and Financial Status Affidavit;
 - verification of the biodata and facing page of the client’s U.S passport and the client’s Texas driver license;
 - an acknowledgement and encroachment and hold harmless Agreement;
 - a USA Patriot Act, Customer Identification Verification; and
 - the Borrower’s Affidavit as to his ability to repay a “non-qualified” mortgage.

(11) American Society of Notaries, ASN Hot Tip, May 2009 #2, and National Notary Association Notary Bulletin Hotline Tip February 07, 2012.

In its Hot Tip, the ASN comments that, “An astonishing number of notaries don’t know the meaning of the “S.S.” symbol or erroneously believe it is a request for a social security number!”

(12) The New Shorter Oxford Dictionary (193), entry for “scilicet”.

(13) E.g. Colorado, Connecticut, Florida, Hawaii, Idaho, Maine, Massachusetts, Missouri, Nebraska, Oklahoma, Oregon, Pennsylvania and Wyoming. Colorado is alone in noting that “ss” is “archaic and actually has no meaning on a notarial certificate” [Colorado Notary Handbook at 21].

(14) Bryan A Garner, A Dictionary of Modern Legal Usage (New York, OUP, 2nd ed, 1995), 825.

In this instance, the American Correspondent advised that Apostilles were not required to be affixed to any notarised document.

On completion, the notary scanned the documents to the client and, at the client's request, also scanned them to the American Correspondent. The client then returned the documents (as bound together by the notary) to the U.S.A. by international courier.

A SHORT EXCURSUS – “FANNIE MAE” AND “FREDDIE MAC”

The paperwork generally required by U.S home loan lenders often includes reference and materials relating to either:

- the U.S Federal National Mortgage Association (“**FNMA**”), popularly known as “**Fannie Mae**”; or
- the U.S Federal Home Loan Mortgage Association (“**FHLMC**”), popularly known as “**Freddie Mac**”.

Fannie Mae buys and packages mortgages from major retail and commercial banks as well as mortgages insured by the U.S Federal Housing Administration and the U.S Veterans' Administration. Freddie Mac buys and packages mortgages from smaller banks, savings and loan and other communally oriented lenders.

Both organisations are supported by the U.S Treasury and both sell mortgage packages to the private and public investment markets. The entire process provides liquidity to lending institutions for fresh new home loan lending.

NOTARIAL SERVICES PROVIDED BY U.S CONSULAR OFFICERS IN VICTORIA

Pursuant to the 1963 Vienna Convention on Consular Relations, U.S Consular officers in Victoria [and in Australia generally] are entitled to provide a range of notarial and authentication services to Australian residents in relation to their personal and commercial affairs in the United States.

U.S Consulate-General Melbourne

Address: 533 St. Kilda Road, Melbourne, Vic. 3004.
Telephone: 9526 5900
Website: au.usembassy.gov

Appointments are made via an online appointment facility.

Consular notarial services are provided strictly by appointment. Appointments are limited and not uncommonly, may only be made some weeks in advance.

Any suggestion to a client by an American Correspondent to approach a U.S consular officer to notarise substantial documentation in preference to obtaining the services of a local [Victorian] notary is inappropriate and should be resisted.

U.S Department Of State Foreign Affairs Manual

The U.S Department of State publishes a comprehensive Foreign Affairs Manual (**FAM**) which may be accessed online at <fam.state.gov/Fam/FAM.aspx>.

7 FAM 800 deals with Consular Officers' powers and duties in relation to their notarial and authentication services.

ARE APOSTILLES REQUIRED?

Australia and the United States are both party to the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (“**the Apostille Convention**”). (15)

Victorian notarial acts and signature verifications are “public documents” for the purposes of the Apostille Convention and may have apostilles affixed to them when they are required to be produced and used in the USA.

(15) The Convention entered into force for the USA on 15 October 1981 and for Australia on 16 March 1995.

Unlike the position in the USA where it is easy to search official government websites to determine if a person purporting to be a notary is in fact commissioned as a notary in a particular jurisdiction, there is no publicly searchable government register of notaries in Victoria or elsewhere in Australia.

For most Americans, the niceties of what is a public document for the purposes of the Apostille Convention and the function of the Convention itself are irrelevant. What is important to Americans is that an Apostille affixed to a Victorian notarised document is official Australian government confirmation that the purported Victorian notary actually holds office as a notary and that the notary's signature and seal on the notarisation are genuine.

Regrettably, there is no definitive overarching rule as to when an Apostille should be affixed to a document notarised by a Victorian notary.

A good rule of thumb is that if a Victorian notarised document

- is to be filed in an American court proceeding;
- is required for U.S federal government purposes; or
- is to be recorded in U.S state or county records or is otherwise required for state, county or municipal purposes an Apostille should be affixed to the document by DFAT.

Frequently, U.S banks, title companies, insurers and other non-government institutions ask for notarised documents to be apostilled, for their respective "comfort" purposes. There is no Australian or U.S law preventing them from requesting, receiving or using apostilled notarised documents for those purposes or for any other legitimate reason.

In any event, there is no need for a Victorian notary to "jump the gun" and arrange for notarised documents to be apostilled without the client having first been requested to do so by the American Correspondent.

In all cases, if an American Correspondent makes no mention of any need for notarised documents to be apostilled, it is always appropriate for the Victorian notary to raise the issue with the American Correspondent [via the client] in order to seek a definite response one way or the other.

If it turns out that an American Correspondent has erred in advising that an Apostille should be obtained when it was not required, no real harm is done by having the notarised document apostilled. On the other hand, if an American Correspondent wrongly advises that an Apostille is not required (and that advice has been followed) and it turns out that the notarised document should have been apostilled, as an alternative to sending the document back to Victoria to be apostilled, the matter may be rectified in the United States.

Australian consular officers located at the Australian Embassy in Washington DC and at the Australian Consulates-General in Chicago, Houston, Honolulu, Los Angeles, New York and San Francisco are authorised to affix Apostilles to Australian public documents, including Victorian notarial acts and certifications of signatures. (Australia's honorary consuls in Denver and Miami do not have that authority).

REQUESTS FOR CONSULAR LEGALISATION OF NOTARISED DOCUMENTS

Occasionally, a client's American Correspondent will request that a notarised document be "consularised" or "legalised" by a U.S Consular officer in Australia.

Under no circumstances can that request be met. The only recognised means of authenticating an Australian notarisation required for any purpose within the United States is the affixing of an Apostille, which by virtue of the Apostille Convention has completely replaced Consular legalisation of notarised documents as between contracting parties.

As noted above, the Apostille Convention is an international treaty to which the United States and Australia are both contracting parties.

Article VI (paragraph #2) of the Constitution of the United States (generally known as "the Supremacy Clause"), provides that:

... all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Therefore, the provisions of the Apostille Convention supersede and displace any state, territory or local law or practice which is inconsistent with the Convention.

Accordingly, **any request** by any court or bank or other institution in the United States or by a state, territory, county or municipal authority **for consular legalisation of an Australian notarisaton is invalid.**

INSTRUCTIONS TO RETURN UNBOUND DOCUMENTS TO AMERICA

Often enough, an American Correspondent's instructions include a direction that the notary must not staple or otherwise fasten or bind notarised documents, because they must be returned to the USA as loose pages. (Presumably making it easier for filing clerks to scan the documents into electronic registers.)

A Victorian notary must never comply with a direction of that nature nor should the notary provide an unbound notarised document to the client.

Apart from it being in fundamental breach of a basic precept of good notarial practice in Victoria, failure to properly bind a notarised document will result in DFAT declining to affix an Apostille to the document if needed.

In passing, it is noted that U.S consular officers are instructed to bind notarised documents consisting of two or more sheets.

Among other things, 7 FAM 837.4 provides:

- a. When the instrument or document to which a notarial act relates consists of more than one sheet, or when the notarial certificate will be attached and not written on the [single page] document itself, [the consular officer] should bring all of the pages together under [the officer's] official seal.
- b. This is best done by perforating each of the pages, including the notarial certificate, in the upper left corner [and by] inserting eyelet grommets ...
- c. ... the total number of pages should be indicated on the consular certificate or on the last page of the instrument where no separate certificate is used.

If necessary, American Correspondents should be told that when it comes to binding notarised documents, Victorian notaries' standards are at least as exacting as the standards required of U.S consular officers.

SIGNATURE PAGE PACKAGES

From time to time, but with increasing frequency, a client will receive an emailed Signature Page Package [usually] from a trusted American Correspondent such as the client's lawyer or business associate; often enough relating to the imminent closing (ie. settlement) of a commercial transaction.

Invariably, the matter is "urgent" and the time limits specified for the return [by PDF scan and by FedEx/DHL] of executed, notarised and apostilled documents are extremely tight.

A Package usually includes the first pages of several documents and signature pages for each document, some of which are to be simply signed by or on behalf of the client and others of which require signatures to be notarised.

It should go without saying that a Victorian notary must never notarise a signature on a bare signature page, no matter how trustworthy the local or U.S source may be and no matter how confident the client is that "she'll be right" once the signature pages have been returned to the USA.

A REQUEST TO "EXPLAIN" DOCUMENTS AND TO OTHERWISE ADVISE THE CLIENT

Throughout the United States, notaries are strongly warned not to "explain" aspects of documents to be notarised to clients for

fear of accidentally straying into the “unauthorised practice of law” which is a serious offence in all jurisdictions.

Nonetheless, sometimes, but not often, and presumably in an attempt to be helpful and to allay possible client concerns about the daunting mountain of paperwork to be completed, an [over-enthusiastic] American Correspondent will request that the Victorian notary explain particular aspects of documents to the client or otherwise advise the client about the purposes of documents.

A request of that nature must not be accommodated. Even though all Victorian notaries are lawyers, the longstanding general rule of Victorian notarial practice is that a notary should not give any professional advice to a client other than in relation to the nature and terms of a notarial certificate and its subsequent authentication. Transactional advice to a notarial client is a matter for the client’s Australian or foreign advisors, even if, as a lawyer, the notary is expert in areas to which documents relate.

Normally, the notary’s duty is only to ensure that documents are actually filled in and to indicate to the client when they are not. In that regard, it is emphasised that under no circumstances should a notary intervene in relation to a document which is patently incomplete or which refers to exhibits or annexures that are missing.

To make matters worse, on the odd occasion the notary is asked to complete a formal certificate within the documents that the requested explanation or advice has been provided to the client who understands what he or she has been told.

When faced with a certificate of that nature, the notary should cross it out and replace it with a statement to the effect that Victorian notaries are prohibited from giving transactional advice to clients.

Apart from anything else, it is a brave lawyer who gives explanations or advice about American documents and transactions without being admitted to practice by the relevant U.S state or territory bar.

U.S POWERS OF ATTORNEY

The U.S federal government has not prescribed powers of attorney to be used for any federal purposes. Suitable U.S state or territory or properly authenticated foreign notarised powers of attorney may be used for federal purposes as and when needed.

Each U.S state and territory has prescribed or recommended its own powers of attorney to be used for its own domestic purposes.

In those forms, the person or entity granting the power is usually referred to as “the Principal” and the attorney is usually referred to as “the Agent” or “the Attorney-in-Fact” (to distinguish the attorney from an “attorney-at-law”). Typically, state and territory legislation prescribes or recommends specific forms of powers of Attorney to be used generally, or for health or guardianship purposes, or for specific commercial purposes. Most jurisdictions have provision for specific powers of attorney for:

- bank account transactions;
- real estate closings;
- stock (ie shares and securities) transactions; and
- sale of motor vehicles.

As a general rule, U.S attorneys-at-law may prepare their own forms of powers of attorney for local or international general or specific purposes, so long as those forms do not purport to replace prescribed forms.

There does not appear to be legislation in any U.S jurisdiction that prevents the use of powers of attorney in the USA that have been prepared outside the USA in “foreign” forms. “Foreign” powers of attorney must always be signed in the presence of a notary in the country of origin and, as applicable, be apostilled or legalised.

U.S powers of attorney are not formulated as deeds. Save for Victorian prescribed short forms which are to be used domestically and which are expressed to be deeds, there is no requirement of Victorian law that a power of attorney be executed in Victoria by the Principal as a deed in order to be effective abroad.

Therefore, a U.S state or territory power of attorney sent to Victoria by an American Correspondent may be simply signed (and if required, sworn) in the Victorian notary’s presence. The notarial certificate may then be completed in the ordinary course.

AMERICAN “VITAL RECORDS”

Birth, death, marriage and divorce certificates are generically known in the United States as “vital records”.

From time to time, Victorian notaries are asked to assist clients in obtaining or certifying copies of U.S vital records. Another minefield to be navigated.

Nothing prevents a Victorian notary certifying a copy of a U.S vital record for strictly non American purposes. **Copies of U.S vital records certified by “foreign” notaries, even with Apostilles affixed, are not recognised or accepted in the United States at all.**

Notaries holding office in most U.S jurisdictions have limited authority to certify copy documents. With few exceptions, they are forbidden to directly certify copies of vital records. (16)

Incidentally, it is a U.S. federal offence punishable by up to 25 years imprisonment for any person (including an American notary and possibly a foreign notary as well) who:

... without lawful authority, prints, photographs, makes or executes any print or impression in the likeness of a certificate of arrival, declaration of intention to become a citizen or certificate of naturalization or citizenship or any part thereof. (17)

Note: The offence relates to U.S. naturalization and citizenship papers. It is not a federal offence to copy or notarise a copy of a U.S passport.

If needed, the U.S Citizen and Immigration Services, will provide certified true copies of naturalization and citizenship papers, provided that the requesting person’s identity and status as a naturalised citizen can be confirmed by the USCIS office at which the request is processed. (18) Applications may be made online and do not require the intervention of an American or foreign notary.

Obtaining official copies of U.S vital records

Victorian notaries and their clients are able to obtain official copies of vital records directly from relevant state or territory sources.

Hot links to individual state and territory sources, information and application forms may be found on the U.S. National Center for Health Statistics website: <[cdc.gov/nchs/w2w/index.htm](https://www.cdc.gov/nchs/w2w/index.htm)>

Sometimes, payment can be troublesome. Many offices do not accept credit card payments by mail or telephone. Generally, international payments must be made by cashiers cheques or international money orders in U.S dollars drawn upon a U.S bank.

Almost always, it is simpler, faster and easier to use the services of an accredited commercial data broker to obtain official copies of vital records. Vitalchek Network Inc (“**Vitalchek**”), a member of the international LexisNexis group, is the largest and best known of the data brokers. Vitalchek is accredited by every U.S state and territory. Its website is <https://www.vitalchek.com>

In the past, difficulties have been experienced in obtaining California vital records via Vitalchek, because California did not recognise foreign notarisation of documents provided in support of Applications. (The same difficulties arose when Applications were made directly).

Due to recent changes to California’s legislation, the particular difficulties now appear to have been overcome.

(16) E.g. Colorado notaries may certify copies of out-of-state vital records and in Louisiana, notaries may certify copies of original certificates or documents including vital records annexed to any authentic acts they prepare and complete.

(17) 18 USC§1426.

(18) For further information see USCIS website

ANOTHER EXCURSUS – U.S TAXPAYER IDENTIFICATION NUMBERS

Every person and entity liable to pay U.S federal tax must have a U.S Taxpayer Identification Number (“**a TIN**”).

All U.S citizens (wherever located), all U.S permanent residents and most non-citizens lawfully working in the United States are entitled to be registered for U.S social security benefits. On registration, a person receives a unique Social Security Number (“**an SSN**”) from the U.S Social Security Administration. The SSN doubles as the person’s TIN.

Within the United States:

- an Employer Identification Number (“**an EIN**”) issued by the U.S Internal Revenue Service (“**the IRS**”) to American **business entities (including sole proprietorships, partnerships, corporations, trusts, non-government not-for-profit organisations and deceased estates)**, is the entity’s TIN; and
- a foreign national who is not eligible for U.S social security benefits (and therefore not eligible to have an SSN) or a foreign entity or person(s) that are not eligible to have an EIN must obtain an Individual Taxpayer Identity Number (“**an ITIN**”) from the IRS.

Outside the United States, an ITIN may be obtained from the IRS only by using the services of an IRS Certified Acceptance Agent Presently, there are eight certified Acceptance Agents in Australia (see Appendix #2 below) each with Australia-wide jurisdiction. (19)

In all applications for the issue of an ITIN, an IRS Form W-7 must be filed. The form is accompanied by documentation substantiating the Applicant’s true identity and status as an alien individual or foreign entity.

In foreign jurisdictions, such as Australia, the Acceptance Agent reviews and certifies the Applicant’s documentation, interviews the Applicant or the Applicant’s authorised signatory (these days by audio-visual link where necessary) and forwards the completed Form W-7 to the IRS for processing.

In the case of an individual Applicant, the Acceptance Agent must sight the individual’s passport and any other original relevant documents.

For Form W-7 purposes, notarised copies of documents are not acceptable. Notaries have no role in the process.

Author’s Acknowledgements and Thanks

The preparation of this Practice Note was originally prompted by a most interesting and informative Continuing Professional Education Presentation by the English Notary, Tony Martin, U.S Documents – a practical approach for members of the Society of Notaries of England and Wales. (Found at <[the notariessociety.org.uk](http://the.notariessociety.org.uk)>)

During the course of my notarial practice, I have been able to assist a good many clients in conducting their personal and commercial affairs in America by notarising a large range of documents sent from that extraordinary country. Those interventions have been invaluable in identifying the issues I have canvassed in this Practice Note.

Thanks to my notarial colleagues, Michael Bula, Paul Cariss, Joseph Lukaitis and John Pearce for sharing their experiences and thoughts on the subject with me.

As always, special thanks to my wife Robyn, for her professional skills and her continuing support and never-ending patience.

April 2022

(19) Acceptance Agents may also be IRS Enrolled Agents, who are entitled to prepare U.S tax returns for clients and to represent U.S taxpayers who are being audited by the IRS.

APPENDIX #1

Links to America's notary public laws and websites

• Hot links to official notary public websites in

- all the U.S states;
- the District of Columbia; and
- the U.S Virgin Islands

may be found on the Notary Public Administrators ("NPA") website. (The NPA is a staff section of the National Association of Secretaries of State, based in Washington DC).

See <npa-section.com/contacts-resources.html>

Relevant legislation and materials concerning notaries public in the remaining four permanently inhabited U.S territories may be found as follows:

- American Samoa
See <new.asbar.org/section/title-31-professions/chapter-03-notarypublic/>
- Guam
See <oagguam.org/guam-notary/>
- Northern Marianas Islands
See <cnmilaw.org>
Search for public law 14-52
Also search for Chapter 5-30 notaries public rules and regulations
- Puerto Rico Google search for Puerto Rico Notarial Act 1987

APPENDIX #2

IRS certified Acceptance Agents in Australia

This list is basically as published by the IRS online at <irs.gov/individuals/international-taxpayer/acceptance-agents-Australia> Where necessary, particulars have been updated following ASIC and Agent's website searches.

- **Jeremy Crooks of the Firm, Gingerbread Tax**
160 Clarence Street, Sydney, NSW, 2000
Telephone: 0421 052 323
- **Catherine Smith of the Firm, A Cloud Thing**
2 Warri Crescent, MacMasters Beach, NSW, 2251
Telephone: 0421 241 496
- **Taxstudio (Australia) Ltd**
111 Flinders Street, Surry Hills, NSW, 2010
Head Office telephone: +1 (310) 633 3339
- **USglobaltax Pty Limited**
Suite 114, 410 Elizabeth Street, Sydney, NSW, 2000
Head Office telephone: +1 (649) 373 2949
- **Kudzanai (Richard) Makura of the Firm U.S. Tax Time**
28 Eenie Creek Road, Noosaville, Qld, 4566
Telephone: 1800 143 412
- **Ustaxcentral Australia Pty Ltd**
Shop 3, 249 Oxley Avenue, Margate, Qld, 4019
Head Office telephone: (07) 3040 3586
- **New York Business Advisory Pty Ltd**
Shop 4, 1 Young Street, Southport, Qld, 4215

Telephone: 0416 399 721

• **Donna Shaw**

101 Koornalla Crescent, Mount Eliza, Vic. 3930

Telephone: 0412 260 758

APPENDIX 3

Paper sizes

Most American legal documents are prepared on “U.S Legal” paper (216mm x 365mm; 8.3” x 11.7”) as opposed to A4 paper (210mm x 297mm; 8.5” x 11”) which is the paper generally used in Australia and internationally.

In Australia, office laser and inkjet printers typically have their “default” setting set to A4 paper. Overwhelmingly, office printers have ‘auto-scale’ in their programming and automatically scale printouts of American documents received by email to A4 paper.

All modern [digital] photocopiers are readily adjustable to enable “U.S Legal” documents to be sized to A4 paper when copied. If an American document on “U.S Legal” paper is sent or handed over by a client for completion, signing and notarisation, it should be copied to A4 paper before being completed, signed and notarised.

Notarial certificates should be prepared on A4 paper to match the paper size of the [adjusted] American documents.

Print out documents “Single Sided”

“Double-sided” documents should always be notarised as “single-sided” documents to make it easier to scan them back to America.

Advising U.S recipients to “scale” scanned documents

When scanning notarised document(s) to the client, to in turn scan to an American Correspondent, it is always useful in the covering email for the Victorian notary to suggest that the American Correspondent be advised to take necessary steps to scale the scanned document(s) to the paper available on the receiving printer(s).



Professor Zablud is an Australian Lawyer and Notary. He is an Adjunct Professor at the Sir Zelman Cowen Centre and at the Victoria Law School, Victoria University.

He is held in the highest regard throughout the common law world for his commitment to excellence, the advancement of the notariat and his outstanding contribution to the education of prospective and practising notaries.

He is considered to be a leading world expert on the Hague Apostille Convention and the authentication of documents for cross-border purposes.

Professor Zablud was the inaugural Chairman of the Board of Governors of The Australian and New Zealand College of Notaries and is a Distinguished Fellow of the College.

He is also a Life Member and a Fellow of the Society of Notaries of Victoria and is a Councillor and past-President of the Society.

As Director of Notarial Studies at the Sir Zelman Cowen Centre, Professor Zablud designed and is responsible for the presentation of the Professional Course in Notarial Practice – the pre-eminent qualification for notaries in Australia and one of the outstanding courses of education of its kind in the common law world.

JUSTIN MCKENNA

Justin McKenna of Ireland, one of the founding directors of WON/CLAN, has just retired to concentrate on family and particularly grandchildren (eighth due in April).

You might like to include the following news item in the next Notary World.

Justin McKenna of the Faculty of Notaries Public in Ireland, one of the founding directors of WON/CLAN, has just retired to concentrate on family and particularly grandchildren (eighth due in April).

President Stewart Germann, and everyone else involved, appreciate the huge contribution that Justin made, firstly to the Irish Faculty over many years and then on the birth of WON at the conference organised by the Irish Faculty, via conference director Justin McKenna in Dun Laoghaire, Co. Dublin. Justin has continued to work on behalf of CLAN.

“Family comes first”. Dad and Grandad are two of the most important and rewarding positions. All of the directors know that, particularly sadly since the death of his wife Clare at his side, Justin will continue to fulfill the roles of parent and grandparent in true Justin fashion and with flair.

I know and appreciate that Justin’s wisdom will continue to be available.

Thank you Justin.

--

Leo Mangan

The Common Law Association of Notaries is here to help. Reach out today if you have any questions.

NOTARY WORLD



APRIL 2024



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