



Public Notaries

Do you need to send a legal document or prepare a statement for use overseas, particularly by a government department or a court? If so, you probably need a public notary.

What is a Public Notary?

Most countries require that legal documents which originate from or are signed in a different country must be notarised for the purposes of authentication. Only then can they be used, officially recorded or have legal effect. In Australia, a public notary is a qualified legal practitioner who is authorised to attest and certify documents or to make certified copies of them in order to render them authentic for use in other countries.

Notaries are not international Justices of the Peace although they do have an international focus. Apart from certifying the authenticity of documents they, also perform other official acts such as protesting bills of exchange and preparing shipping protests.

What are Notary Services?

The principal services that notaries perform include:

1. attesting documents and certifying their due execution for use internationally;
2. preparing and certifying powers of attorney, wills, deeds, contracts and other legal documents for use internationally;
3. administering oaths for use internationally;
4. certifying copy documents for use internationally;
5. preparing attested copies of official documents under official seal, for use internationally;
6. noting and protesting bills of exchange; and
7. preparing ship's protests.

What is a Notarial Act?

A notarial act is a document which is prepared and executed by a notary and which is authenticated by his or her signature and official seal. The document can, for example, certify the due execution of a deed, contract or other document in the notary's presence. It can also verify some fact or thing of which the notary himself or herself has knowledge. The document is then an internationally recognised record of the fact recorded in the document or that something has been said, done or agreed.

Usually the notary's document is in the form of a certificate which deals with one or more aspect of the document to which it is attached. Most often, the certificate verifies the genuine nature or validity of the relevant document, its legal status and its legal consequences. Frequently the certificate also verifies the execution of the document and the identity, capacity and authority of the person(s) who executed it.

Documents certified by a notary are sealed with the notary's seal and are recorded by the notary in a register.

Who may be a Public Notary?

Nearly all notaries in Australia hold full practicing certificates as solicitors. In some states and territories, notaries must complete a notarial practice course. In Victoria, a notary may also obtain a graduate diploma in notarial practice.

Unlike in the United States, Australian notaries do not hold "commissions" which can expire. Generally, once they are appointed, notaries are authorised to act as a notary for life or until they cease legal practice, and can only be "struck off" for proven misconduct.

Apostille and Authentication Certificates

Many countries where notarised documents are intended to have effect may also require that an Apostille or Authentication Certificate is affixed to the document. The Hague Apostille Convention of 5 October 1961 abolished the requirement for legalisation of foreign public documents among states which have ratified and adopted the Convention. Accordingly, an Apostille will be recognised and accepted by all countries which have ratified the Convention. The Convention entered into force in Australia on 16 March 1995. As at 31 July 2009, 96 countries plus the European Union have ratified the Convention.

An Apostille is a certificate in a prescribed form which is placed on a notarised document by a competent authority in the country in which the document originated. In Australia, the Department of Foreign Affairs and Trade ("DFAT") is the competent authority to issue an Apostille. If the other country involved is not party to the Convention, DFAT will affix an Authentication Certificate to the document after it has been notarised.

Other Documents

A notary may "protest" a bill of exchange such as a cheque or promissory note. The protest is a declaration that a debtor has refused to accept or honour a bill of exchange when it was presented for payment.

A notary can also note a ship's protest. This is a written statement or "protest" by a ship's captain which records a misadventure or mishap which has caused damage or loss to the vessel and/or its cargo.

Notaries in Other Countries

Notaries in Australia are common law notaries. Although they perform some functions of notaries in civil law countries (such as Germany, Switzerland and Austria), they do not have all the same functions or powers.

Notaries in civil law countries are responsible for a wider range of work than in common law countries. They frequently undertake the type of work which is carried out by government agencies and public registries in common law countries, such as the Registrar General. They also perform much of the work which, in countries like Australia, is undertaken by solicitors such as property transactions, company incorporations and preparation of wills. In many European countries, notaries register wills and other documents and authenticate real estate transactions.

Generally in the United States, notaries are less qualified than in Australia and they perform similar functions to JPs in Australia. Their powers are far more limited than those of common law or civil law notaries.

Notaries at Schweizer Kobras

Norbert Schweizer, Michael Kobras and Ricky Lee are all public notaries and fellows or members of the Australian and New Zealand College of Notaries. If you require a document to be notarised, please do not hesitate to contact us on mail@schweizer.com.au or +61 (2) 9223 9399 to make an appointment.



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Recent Changes to 457 Visa Program

On 14 September 2009, important changes to the 457 visa program regulating sponsorship, nomination and visa applications were made. New requirements and obligations more or less reflect Australian industrial relations legislation. Existing sponsor businesses and employees holding 457 visas are also affected by the changes.

The changes include:

1. replacement of the minimum salary level with a market salary;
2. new minimum levels of terms and conditions of employment;
3. a higher English proficiency level; and
4. applicants must have health insurance.

Further details about how the changes affect:

1. businesses which are planning to sponsor foreign employees on 457 visas;
2. existing sponsor businesses; and
3. existing 457 visa holders,

will be provided in our December newsletter.

If you require further information in the meantime, please contact Michael Kobras (MARN 0638733) on +61 2 9223 9399.



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