



THINKING NOTARY

Notarial practice is a profession of great antiquity probably having its origin in the civil institutions of ancient Rome.

The office of Notary Public developed from the activities of scribes until Notaries became independent officers. A Notary's certificate and seal are awarded recognition internationally as a public act in the same way as a document under the seal of a Court. Since January 1986 the appointment of Notaries in New South Wales has been made by the Supreme Court in accordance with provisions contained in the Public Notaries Act 1997 (No. 98). The suitability of for appointment however, is determined by the Legal Profession Admission Board which has made rules for the appointment of Notaries. In some ways the office of a Notary has many similar roles to that of a Justice of the Peace (JP). So what do each of these appointments do and how are they different?

What is a Justice of the Peace?

A JP plays an essential part in the legal system and in the community of NSW. Unlike the office of a Notary Public, it is not necessary for JP's to be legally qualified and they are not entitled to charge fees for service. Two of the main functions of JP's are to witness the signing and execution of documents such as statutory declarations, and affidavits and to certify copies of documents. The conduct of a JP is subject to the Code of Conduct for Justices of the Peace in NSW. Failure of a JP to comply with the Code of Conduct can result in loss of office or review. Dishonesty or failure to fulfil statutory obligations can result in legal proceedings being brought against a JP in negligence. In *Graham v Hall & 1* [2006] NSWCA 208 for example a JP was sued for damages for alleging to have witnessed the signature of another when not in that person's presence.

The Australian Federal Government does not appoint JP's which is regulated by the States. The duties and appointment of JP's in NSW are regulated through the Justices of the Peace Act 2002 and the Justices of the Peace Regulation 2003.

More information on JP's can be found on NSW Attorney General's Department website at www.lawlink.nsw.gov.au/lawlink/cru/ll_cru.nsf/pages/jp_index JP's within the region can also obtain information and support by joining the NSW Justices Association Northern Tablelands Support Group by contacting Peter Hutchinson

on (0407) 658 358.

What is the difference between a JP and a Notary Public?

A Notary Public in NSW must be admitted to the Supreme Court of NSW and have not less than 5 years experience as a legal practitioner. Additional notarial practice training is required and, once appointed, Notaries are entitled to charge fees for their services. As a guide, the NSW Society of Notaries publishes a recommended scale of fees each year. The current recommended scale is applied at Legal Minds and can be viewed at http://notary.zfweb.net/fees_scale

In addition to all of the functions of a JP a Notary is required to have the combined legal experience to draw up formal certificates and to notarise, verify, certify and authenticate documents that can be recognised throughout the world such as debentures, affidavits for use in Court proceedings in other countries, powers of attorney, estate matters, confirming identity of individuals and even ships protests. A Notary is identified by their registered signature and their Notarial seal. When documents are notarised a certificatedrafted and executed by the Notary is sewn onto the copy of the document with a ribbon. A wafer is placed over the ends of the ribbon and sealed with an embosser. The certificate can then not be removed unless either the paper is torn, the ribbon is cut, or, the seal is broken. This process ensures that a document is secure. A stapled certificate is not accepted by DFAT or for other notarial purposes.

To ensure recognition of the Notary's signature and seal, registration is made with the Department of Foreign Affairs and Trade (DFAT). This is an important process as some countries, like Australia, are contracting States to the Hague Convention of 5 October 1961 and instead of having to have public documents legalised by individual countries, documents can be sealed with an Apostille by DFAT. In those countries that are not a Convention country, individual Consulates are required to be consulted on specific arrangements for those countries which can in some cases be more complex and expensive.

Within our social and business community the role and responsibility of JP's and Notaries are an important function to ensure the authenticity and certification of documents to keep our day to day local and international business transactions moving.

Christopher K C Serow
Principal, Solicitor Director, Notary Public,
Migration Agent MARN 0854319

Thinking notary



Your goals

All the experience, skill and tenacity needed to get you there.

Our know-how

Solicitors

From commercial, insurance and business transactions to family, employment and estate matters.

Conveyancers

Fast, accurate detailing of all property transactions.

Mediation

Sensitive dispute negotiation to help you avoid going to court.

Notary Public

Witnessing and certifying the validity of documents, affidavits and depositions.

Migration Agent

Negotiating with government on your behalf for family, lifestyle or career reasons.

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www.legalminds.com.au

T 1300 642 166

E talktous@legalminds.com.au

157 Beardy Street Mall, Armidale