

THE FACULTY OF NOTARIES PUBLIC IN IRELAND

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The Authentication of Documents by the Notary Public

together with

Draft Specimen Notarial Certificates

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'I know thou art a public notary,
and such stand in law for a
dozen witnesses.'

Philip Massinger
A New Way to Pay Old Debt (1625)
(in the mouth of Sir Giles Overreach)

Introduction

The office of notary public is a distinct arm of the legal profession. The legal justifications governing the functions and powers of a notary public in Ireland, England and Wales are based principally on the law of custom, case law and, to a limited extent, statute law. The statute law includes delegated legislation in the form of statutory instruments. At the heart of the functions and powers of the notary is a concept of recording and authenticating the legal acts of persons, natural and 'artificial' - in the sense of a body corporate.

Functions and Powers of the Notary Public

Ireland was the 'first adventure' of the common law. The common law and statute law inherited on Ireland becoming an independent nation are of some significance in relation to the functions and status of the notary public.

Article 73 of the Constitution of Saorstát Eireann (the Irish Free State) is the 'vehicle' whereby the entire corpus of law in Ireland prior to the enactment of 1922 Constitution was carried over into the new Irish State subject to the proviso that any such inherited law was not inconsistent with the provisions of the (new) 1922 Constitution.

The issue arises what was the corpus of law in relation to the notary prior to the legal 'tsunami' of 1922? Ireland did not have the equivalent of Dean Rory O'Connor writing on notarial matters in 1922. So we must rely on other writers. The 1912 edition of *The Laws of England* under the authorship of the Earl of Halsbury (Lord High Chancellor of Great Britain) (and other lawyers), referred to generally as *Halsburys Laws of England*, is an authority of some eminence prior to the 1922 Constitution of the Irish Free State.

Halsbury defined the office of notary and his or her function as follows:

A notary public is a duly appointed officer whose public office it is, amongst other matters:

- to draw, attest, or certify usually under his official seal, deeds and other documents, including conveyances of real and personal property and powers of attorney in relation to real and personal property....;
- to note or certify transactions in relation to negotiable instruments;
- to prepare wills or other testamentary dispositions;
- to draw up protests or other formal papers relating to occurrences on the voyage of ships and their navigation as well the carriage of cargo in ships.

Under the heading 'functions', *Halsbury* expands on the previous description of the office of notary stating that a notary is entitled to:

- prepare deeds, agreements and wills relating to real and personal property;
- prepare deeds and other documents intended to take effect in the British dominions beyond the seas and in foreign states in such form and language as may conform to the law of the place where such deed or document is intended to operate;
- verify, authenticate and attest by his [her] official seal the execution of deeds and other documents, contracts and powers of attorney;
- prepare bottomry and *respondenti* bonds, arrange agreements, and other mercantile documents; and
- translate and verify the translation of documents in any foreign language into the English language and vice versa.

[The terms 'bottomry' and '*respondentia*' have since become obsolescent. 'Bottomry' meant the pledge of a ship and freight so as to secure a loan which allowed the ship to continue its voyage. '*Respondentia*' related to a pledge of the freight only.]

Other functions referred in the 1912 edition of *The Laws of England* relate to the presentation of the bills of exchange and ships protests.

As stated, Article 73 of the Constitution of the Irish Free State (1922) carried over into the new Irish State relevant laws of England provided they were not inconsistent with the 1922 Constitution.

The next constitutional instrument of significant change was the Constitution of Ireland (Bunreacht na hEireann) adopted in 1937. Article 50 of the Constitution of Ireland 1937 provided for the continuance of the then existing laws and may be quoted here:

' Subject to this Constitution and to the extent that they are not inconsistent therewith the laws in force in Saorstát Eireann immediately prior to the date of the coming into operation of this Constitution shall continue to be of full force and effect until the same or any of them shall have been repealed or amended by enactment of the Oireachtas.'

Based on the foregoing, the notary public in Ireland is a distinct lawyer with wide powers and functions. In effect, independently of the profession of solicitor or barrister, it is submitted that the notary is entitled to carry out most legal functions that are associated with a solicitor or barrister with the exception of litigation.

Notarial Certificates

Dean E Rory O'Connor in his book, *The Irish Notary* (1987) together with the *Supplement* (Hall & O'Connor) (2006) set out various precedents of authentication in the nature of notarial certificates.

A notarial 'act' will comprise the following:

- The date of the act;
- The name and address of the notary;
- Confirmation of the presence and identity of the appearer (where applicable);
- The place of the notarial act; and
- Signature and seal of the notary.

In general, it is recommended that a notarial certificate should be attached to the front of the document, record, or transaction to which it pertains. There is a strong body of learned opinion that notarial certificates should not be endorsed on deeds, records or transactions, but the present writer accepts that endorsement is often a mode adopted by many notaries in the interests of expediency and conscious of notarial costs.

In this context, one may refer to the concept of documents being 'legally bound'. It is the declared practice of some embassies to refuse to 'legalise' documents that are not 'legally bound'. The concept of documents being

'legally bound' relates to the attachment together of documents (the subject of a notarial certificate) in such a manner that none of the relevant documents can be easily detached with a view to substituting another document in its place. The notarial certificate and associated documents should be so bound together they constitute one compact bound document.

It is in the context of 'binding' documents (the notarial certificate and the document or documents to which the notarial certificate refers) that the use of 'eylets', an 'eyelet' punch or a general punch to make holes come into use.

Ribbons are also of use in relation to the 'legal' binding of documents. The ends of a ribbon holding the documents together may be secured by a wafer (impressed with the seal of the notary).

The use of staples to bind documents is not favoured because staples can be undone. Some embassies will not accept documents merely stapled when 'legalisation' is sought.

Margins on a notarial certificate should allow for 1 inch on the left hand side. This facilitates binding and photocopying. There should be no blank spaces in the notarial certificate and in the documents the subject of the notarial certificate.

The documents, the subject of the notarial certificate, should run in a seamless manner. It is best practice for a notary to number each page (page x of y etc) and to initial each page of the 'notarised' documents together with the appearer.

Long Form Notarial Certificate

The 'Long Form Notarial Certificate' has been so designated to distinguish it from a form of notarial certificate endorsed on a document. The Long Form Notarial Certificate is attached to the relevant document, record, or transaction.

In precedents of the Long Form Notarial Certificate, one frequently comes across the following opening words:

"To All To Whom These Presents Shall Come, Greetings."

This is a beautiful salutation, but the words cause problems for translators. The word 'presents' in English is both a noun and a verb. The concept of bringing 'presents' to another in this 'ethical age' may be the subject of

misunderstandings. For that reason and translation difficulties, it is suggested that this form of words be discontinued.

A suggested Long Form Notarial Certificate which may be attached to an appearer's document, deed, record or transaction is set out as follows:

CERTIFICATE OF NOTARY PUBLIC

BE IT KNOWN

That I, [NP], of [practice address], Notary Public, commissioned for life by the Chief Justice [and President of the Supreme Court] of Ireland, [The reference to 'President of the Supreme Court' is optional, but these words are used in Article 34.4.2 of the Irish Constitution]

CERTIFY

That [AB] residing at [private residential address] identified to me by production of [specify document, preferably a passport] who, in my opinion, has the necessary legal capacity and understands the consequences of this act [The words referring to 'capacity' are optional but there is merit in their use].

APPEARED before me on [date] **AND TESTIFIED** that [Insert here the nature of the testimony of the appearer]

THIS ACT may be received in evidence in a court of law. [Optional]

SIGNED AND SEALED

At

On

Notary Public
Ireland

[SEAL]

Reference may be made here to the Direct Notarial Certificate, (still in the Long Form) where the notary certifies a matter independently of any recorded testimony of any appearer may be set out as follows:

CERTIFICATE OF NOTARY PUBLIC

BE IT KNOWN

That I, [NP], of [practice address], Notary Public, commissioned for life by the Chief Justice [and President of the Supreme Court] of Ireland,

CERTIFY

[Specify what the notary is certifying] [See reference to 'legal capacity etc. at page 6 of this paper, if relevant.]

SIGNED AND SEALED

At [specify place] on [specify date]

Notary Public
Ireland

Seal

A basic draft form of a Notarial Certificate where an appearer signs in the presence of a notary is as follows:

CERTIFICATE OF NOTARY PUBLIC

BE IT KNOWN

That I, [NP], of [practice address], Notary Public, commissioned for life by the Chief Justice [and President of the Supreme Court] of Ireland

CERTIFY

That [AB] of [residential address] identified by [Specify form of identification]

SIGNED the [annexed document] in my presence.

THIS ACT may be received in evidence in a court of law.[Optional]

SIGNED AND SEALED

at [place] on [date]

Notary Public
Ireland

[SEAL]

The issue arises in practice whether a notary may certify the genuineness of a signature of a person which was not actually attested by the notary in his/her presence.

The present writer adopts a form of certificate from The Notaries Society (England and Wales) subject to the provisos specified in the Opinion of the Council of the Notaries Society of England and Wales which are set out below in this paper.

CERTIFICATE OF NOTARY PUBLIC

BE IT KNOWN

That I, [NP], of [practice address], Notary Public, commissioned for life by the Chief Justice [and President of the Supreme Court] of Ireland

CERTIFY

That the signature set out and subscribed at the foot of the annexed document is genuine having been subscribed by the therein named [AB] whose identity I attest.

SIGNED AND SEALED

at [place] on [date]

Notary Public
Ireland

[SEAL]

It is appropriate here to quote the Opinion of the Council of the Notaries Society of England and Wales in relation to this form of Notarial Certificate. That Council states that this notarial certificate should be used only in exceptional circumstances and in accordance with the provisions of the Opinion which is quoted here:

- '1. On a prior occasion the notary must have first seen the signatory affix his signature to a form which is retained in the protocol file of the Notary;
2. The notary should check the continued existence of the signature regularly;
3. If the signatory is representative of an organisation or company, his continued authority should be checked regularly;
4. The notary should at the time of verifying the signature take such steps as are reasonable to ensure that the signatory has in fact signed the particular documents;
5. The certificate must be unequivocal and must not state or imply that the signature has been affixed in the presence of the notary or that the document is/has been properly executed;
6. The notary must refuse to certify the unattested signature if full attestation by a notary is required to complete the formal requirements for the proper execution of the document....
7. Notaries must be aware of the risk of issuing such certificates and should, if in any doubt at all, decline to act.'

One of the frequently recurring notarial acts required of the notary is that a document is a true copy of an original. A suggested text for a Long Form Notarial Certificate is set out here:

CERTIFICATE OF NOTARY PUBLIC

BE IT KNOWN

That I, [NP], of [practice address], Notary Public, commissioned for life by the Chief Justice [and President of the Supreme Court] of Ireland

CERTIFY

That the document annexed to this certificate is a true copy of an original document as produced to me [or, bears all the hallmarks of an original document as produced to me] or

CERTIFY

That I have no reason to doubt the authenticity of the copy document attached to this certificate in the context of it being a true copy of an original as produced to me. [Note: These provisos may not be accepted by the proposed recipient, but are in use in England and Wales.]

SIGNED AND SEALED

At [] on []

Notary Public
Name
Commissioned for Life

[Seal]

Short Form Certificate

As stated earlier, the best practice is that the notarial certificate is attached to the front of the document, record or transaction to which the certificate relates. However, for one reason or another, a notary may feel compelled to endorse a certificate on a document. Some notaries use a prepared stamp and fill in the blanks. Some examples are set out below, starting with a certificate that a document is an original.

Certificate of Notary Public

I certify the within document is an original as produced to me.

Dated this [] day of 200

[NP] Notary Public
Commissioned for life
Address

[Seal]

More frequently, notaries are requested to certify that a document as produced to him/her is a true copy of the original. A Short Form Certificate may use the following words:

Certificate of Notary Public

I certify that the within document is a true copy of an original as produced to me.

Dated [] day of []

Signature of Notary
Name
Commissioned for Life
Address

[Seal]

It has been queried whether the above certificates of the notary in relation to a document being an original or being a true copy of an original are too absolute and whether the notary should qualify the certificate by the use of appropriate words. The following certificate is sometimes used in England and Wales in such a situation:

Certificate of Notary Public

I certify that the within document bears all the hallmarks of an original as produced to me.

Dated [] day of []

Signature of Notary
Name of Notary
Commissioned for Life
Address

[Seal]

The words 'bears all the hallmarks' and 'an original as produced to me' offer some legal comfort to the notary.

Generic Notarial Certificate

I have seen a notarial certificate emanating from high authority which has been described as a 'generic notarial certificate'. Its use is not recommended, as it is unclear as to what precisely the effect of any certificate is. The form I have seen may be quoted here:

Certificate of Notary Public

A Notarial Act has been required of me, [NP], Notary Public, commissioned for life by the Chief Justice [and President of the Supreme Court] of Ireland; Accordingly, in faith and testimony, I have subscribed my name and affixed my official seal at [specify place] on [specify date].

Signature

Name of Notary

Commissioned for Life

Address

[Seal]

Statutory Declaration (Incorporating a Form of Authorisation)

Section 1(1) of the Statutory Declarations Act 1938 provides that it shall be lawful for a notary public, commissioner for oaths, peace commissioner or person authorised by law to take and receive [statutory] declarations in writing of any person making the same before him/her in the form set out in the schedule to the 1938 Act as amended by the Civil Law (Miscellaneous Provisions) Act 2007.

The present writer has frequently seen in use and it is often convenient to combine a form of a statutory declaration and an authorisation/ power of attorney in a statutory declaration. This may be in a pre-prepared form and the handwriting of the notary may be inserted in the appropriate places. This may be useful in terms of a 'house call' or otherwise. The following wording may be considered:

CERTIFICATE OF NOTARY PUBLIC

STATUTORY DECLARATION AND AUTHORISATION

BE IT KNOWN

that I, [NP], of [practice address], Notary Public, commissioned for life by the Chief Justice [and President of the Supreme Court] of Ireland

CERTIFY

[AB] whose identity has been established to me before the taking of this Declaration by the production to me of Passport [specify number] issued on [] by the authorities of [issuing State]

MADE the following Statutory Declaration and Authorisation in my presence:

STATUTORY DECLARATION AND AUTHORISATION

I, [AB] of [] in the County of [] do solemnly and sincerely declare as follows:

(Set out here purpose of declaration),
(Example)

I authorise [CD] of [] of [address] holder of Passport No [] issued by the authorities of [issuing State] to obtain a new passport in my name, my existing passport having expired on [insert date].

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1938.

DECLARED before me [NP],
Notary Public, by [CD] at []
on [] whose identity has been
established to me before the
taking of this Declaration by the
production to me of Passport No.[]

SIGNATURE OF C.D.

issued on [date of issue] by the authorities
of [issuing State] which is an authority
recognised by the Irish Government
[See other alternatives in the Statutory
Declaration Act 1938 as amended]

SIGNATURE of NOTARY PUBLIC

[SEAL]

End of paper/

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Notary Public