

## THE PARTS OF NOTARIAL ACT AND THE TECHNIQUE OF THEIR DRAFTING

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### Abstract

Since the independence of the Republic of North Macedonia in 1991, arose the need for the legal circulation of goods and services. In order to facilitate legal transactions due to their diversity, in 1996, for the first time, we brought the relevant law for notaries. They operate within different branches based on the law. Public power was entrusted to them since November 1997, in which case in 1998 we also have the appearance of the first notaries.

The notary is established as an independent, independent service in which works of the type of public authorizations are carried out on the basis of the law at the request of citizens, state bodies, legal entities and other interested institutions, which positively affected the comprehensive functioning of legal system, and especially influenced the establishment and increase of legal security. In the framework of public authorizations, the most important is the drafting of the Notarial Act. It includes a document on which the opinion of a person is expressed in writing, regardless of the material with which it is written or on which it is expressed and the type of signs with which they are written. The notarial act is an act which, in a strictly defined form and procedure, is drawn up in its entirety by a notary within his official powers. Therefore, this type of notarial act, in addition to the official one, also has the material authenticity of a public document (the so-called full probative value of a public document), because it confirms the content of the legal transaction. This achieves a higher degree of legal certainty in legal transactions, regulates public registers, etc. The emphasis of his work is on the objective by advising the parties and trying to ensure the prescribed requirements of the form. Compliance with the rules for the form and content of the notarial act as well as the drafting procedure of this act provides a good guarantee that the legal work will be valid and that the parties will achieve the intended legal consequences. The contribution of legal certainty is the legislator's commitment to a notarial act that is considered a public document, which in certain cases can also be an executive document.

*Keywords:* notarial service, notary, notarial act, parts of a notarial act

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### Introduction

The notarial act includes a document on which the opinion of a person is expressed in writing, regardless of the material with which it is written or on which it is expressed and the type of signs with which they are written. The notarial act is an act which, in a strictly defined form and procedure, is drawn up in its entirety by a notary public within his official powers. Therefore, this type of notarial act, in addition to the official one, also has the material authenticity of a public document (the so-called full probative value of a public document), because it confirms the content of the legal transaction. This achieves a higher degree of legal certainty in legal transactions, regulates public registers, etc.

A notarial act is not a generally accepted term in comparative law. There are other names such as: notary public (Serbia), notarial act (Croatia), notarized document (Federation of BiH), notarial act (Slovenia), notarial act (Macedonia), notarielle Beurkundung (Germany),

Notariatsakt (Austria), l'atto notarile (Italy), l'acte notarié (France), notariële akte (Netherlands). But despite the terminological differences, this type of notarial act in the Latin notarial system mainly has the same characteristics. It is an authentic and true document containing a legal agreement or other statement of intent drawn up by a notary public within his jurisdiction according to the parties, in accordance with the regulations governing the form and procedure of assembly. In legal theory, special elements that express the characteristics of a notarial act are noticeable.

The essential elements that make up the definition of a notarial act are:

1. it is an act when under its competence, for the parties as a whole, it consists of a notary public as a person with public authority;
2. is an act that contains a contract or other legal transaction, or a declaration of will by which certain rights and obligations are created, changed or terminated;
3. is an act whose content is determined by law;
4. it is a strictly formal act;
5. it is an act in the compilation of which the notary public must follow the procedure defined by law;
6. is an act that represents a public document and can also be an executive title. (Bikić, Miraš, Suljević & Dejan, 2010, p.111).

The compilation of a notarial act with the mentioned characteristics guarantees the validity of the legal work undertaken, the certainty that the parties will achieve the intended objectives, to protect the interests of third parties and realized public interests. The notary public as a legal expert, impartial, a professional, teaching and advising, offers clients a service with a great guarantee that their declarations of will create a legal agreement that will realize their interests.

The material function of the notarial act is manifested in the protection of the autonomy of the will and the freedom of the contract. A notarial act protects, in fact, the freedom of human opinions in the creation of legal relations and gives the individual space for the creation and self-responsible regulation of life issues (Ruth, 2013, p.403).

One of the material functions of a notarial act is its warning. The prescribed form can serve as protection for the parties. The complex procedure of the compilation and structure of the notarial act keeps the parties from irresponsible obligations from the legal business. This is how the form protects the autonomy of the will from itself, preventing the negative aspects of freedom of contract. Therefore, it is said that the form has the function of making the parties more serious. The notary public as an independent professional through counseling and teaching allows removing ambiguities for potential contractors to decide whether or not to consider concluding a contract in the form of a notarial act. If they decide to bind legal work in the form of a notarial act, the notary's expert advice can clarify or avoid divergent interpretation of the content and thus reduce the potential for eventual conflict (Mankowski, 2005, p.665).

But not only that, if the legal work is undertaken in the form of a notary public, the less likely it is to violate the autonomy of the will, the unbalanced power of the contracting parties, because the notary public is obliged to teach the clients. Educating the parties consists in the obligation of the notary public to: 1) clarify the facts, 2) to examine the will (intention) of the parties, 3) to teach them about the law, the consequences of the intended legal action and 4) that such statements of the parties are fully, clearly and concretely recorded in the notarial act. Validation of facts is the basis for proper teaching. The notary public wants the accuracy of the factual claims and interrogates the parties. He must teach the parties the meaning of the legal terms to be

used and whether they use them in the correct sense (Nicola & Tomas, 2009, p.273). It is the duty of the notary public to determine whether the legal terminology used by the party, if there is benefit, really fits his will. The notary public must explain to the participants the legal significance of their statements and the legal conditions for the intended legal success.

Therefore, the procedure of performing a notarial act represents an obligation where teaching compensates for the lack of experience and knowledge with less contractual. In addition, the notarial record further strengthens and allows the autonomy of the will, the parties being equipped with a competent legal expert who through counseling and teaching to support the parties in the exercise of freedom by creating their legal affairs. Neutral expert in the procedure, the execution of a notarial act will expose the possibilities, chances and risks of creating the planned legal work in this way will enable it to be a complex contract where the autonomy of the parties will be implemented in reality (Ruth, 2013, p. 406).

### **Notarial acts form**

In order for a notarial act to have the probative force of a public document, i.e. represents a public document, it is necessary, among other things, that during its compilation the essential elements of the form prescribed by the Law on Notaries (articles 54 and 65) are respected. Without it, the notarial act does not have the status of a public document, and it can be proven with a separate lawsuit that the notarial act is not authentic. Therefore, notaries must strictly adhere to the form and procedure of drawing up notarial acts, because, otherwise, notaries may be liable for disciplinary measures and compensation for damages, because the notarial act has lost the status of a public document. The Law on Notaries (Article 66) and the Regulation on the form, writing manner and registration of notarial documents as well as the confirmation of facts and statements (Articles 2-23) paid special attention to the form and drafting of notarial acts. Bearing in mind that "Solemnitates iuris sunt observandae" or "Form is the highest standard" we will mention some norms for its best implementation.

All notarial documents drawn up by the notary public must contain the coat of arms of the Republic of North Macedonia and the title "Republic of North Macedonia". The coat of arms of the Republic of North Macedonia and the title "Republic of North Macedonia" are written in the upper left corner of the first page of the notarial document and below it is written "NOTARY PUBLIC", his first and last name, head office and address.

In the upper left corner of the first sheet of the notarial document, data is entered for the day, month, year, place and time when the act was drawn up. In the upper right corner of the first page of the document or notarial book, is written the item with the office number from the relevant register or ledger. At the end of the notarial document, under the content and signatures of the parties, the notarial document is personally signed by the notary public and authenticated with an official seal.

If the notarial document consists of several sheets, the mark with the office number from the relevant register or book is placed on each sheet in the upper right corner. The sheets of the notarial document must be sewn with thread, so that they represent one whole. Each sheet of the notarial document must have an imprint of the notary's embossed seal. Each page of the notarial document must be marked with an Arabic number.

## Parts of notarial act

The Law on Notaries clearly defines the obligation for certain legal transactions that they must be made in the form of a notarial act or, equivalent to it, a record of confirmation of a private document. If such legal transactions are not made in the required form, then they will not produce legal effect (Art. 52, LN, RNM) The following legal transactions are made in the form of a notarial act or a note confirming a private document:

- marriage contracts and contracts on property relations between spouses and between persons living in an extramarital union;
- contracts for the ownership of the property of minors and persons who do not have legal capacity, whose immovable objects are movable objects and more valuable rights;
- contracts for the distribution and transfer of property for life, contracts for maintaining life and declarations of inheritance;
- purchase agreements with retention of title;
- gift promises and death gift contracts;
- legal transactions, the subject of which is the transfer or purchase of property or other immovable rights.
- The notarial document for legal action on the basis of which the transfer of the right of ownership, the physical division of real estate, namely the exchange of real estate, is made by the notary public in accordance with the provisions of this law, only if he/she previously ascertained that the conditions stipulated by special laws have been fulfilled.
- The notarial document for legal action on the basis of which the transfer of ownership rights, the physical division of immovable property, i.e., the exchange of immovable property, when the Republic of North Macedonia appears as one of the contracting parties, the notary is obliged to obtain an opinion from the Ombudsman. (Article 56 parag. 3, LN, RNM)
- The sales agreement and sales pre-agreement with a value of the subject of sale over 10,000 euros converted into denars according to the average exchange rate of the National Bank of the Republic of North Macedonia must be drawn up by the lawyer and must contain the seal and signature of the lawyer, regardless of whether to authenticate or verify their signatures.

In addition to the aforementioned provision in the Law on Notaries of the RNM, for certain legal actions the form of a notarial act or a note on the confirmation of a private document may be provided by other laws. The parties may also request the form of a notarial act for other legal actions for which a mandatory act form is not provided. This will often happen in practice, especially in those transactions which, if made in the form of a notarial act and with the fulfillment of other conditions, can be enforceable documents.

Content of a notarial act. The Law on RNM Notaries (articles 65-67) and the Regulation on the work of RMN notaries describes the technique of compiling and recording notarial acts, and thus notarial data, which has already been highlighted. Moreover, the text of the Law itself has provisions on the content of the notarial act, which are mandatory during its drafting. The mandatory elements of the content of the notarial act can be divided into three parts: the introductory part, the text of the legal transaction and the final part.

The introductory part should contain:

- The personal name of the notary public, his place and the declaration that he acts as a notary public;
- Place, date and time of compilation of the notarial act;
- Personal name, date and place of birth, address and unique identification number of the participant (parties and other participants), their legal representatives and proxies, and for the legal entity - name and registered office, number of the decision on entry into register, personal name and address of his representative;
- The number of the document based on which the identity and name of the body that issued the document is determined;
- In addition to these mandatory data described by the Law on Notaries, some other laws also describe other required data, e.g. for the implementation of notarial registers in public registers (thus, in Article 90 of the Law on State Surveillance and Real Estate Cadaster "Official Gazette of the Republic of North Macedonia" No. 29/07) it is foreseen that in the Real Estate Cadaster, in addition to the names and surnames for a natural person, it indicates the name of one parent, and for a legal person - the identity number, which is entered in the business register; occupation of a natural person).
- An integral part of the introductory part is the data for recording the notarial act from the Ordinance on the work of notaries.

After the data for the identification of the parties, it is necessary to indicate in what capacity they act - for themselves personally or as authorized representatives of certain persons on whose behalf the legal business is undertaken, and to declare documents or grounds of authorization for representation (power of attorney, work, etc., their number, date of issue and issuer). These acts must be attached to the original, which must be indicated in the notarial act itself. Also, the introductory part may contain an indication of the documents that are attached, as well as certain instructions and warnings, and a declaration by the notary that the parties are capable and authorized to undertake a certain legal transaction.

### **Wording**

In this part of the notarial act, the declarations of will of the contracting parties are entered, which are aimed at achieving a certain goal, that is, by undertaking legal action. This is where the application of substantive law provisions in relation to a specific legal transaction comes into play. In addition, in relation to declarations of intent to undertake legal work, the notary is obliged to take into account the necessary instructions and warnings for the parties, which he enters into the notarial act, in accordance with the provisions of the Law on Notaries that regulate the notarial acts. This will be discussed in more detail in the section of this document that refers to notarial records of certain legal transactions.

## **The final part of the document**

The Law on Notaries of RNM states that the notarial register must necessarily contain the following elements:

- a statement that the participants understood the content of the legal transaction and that they agreed with the wording compiled by the notary public;
- the way in which the party (blind, deaf, mute or deaf-mute) becomes familiar with the content of the notarial act (Article 40 para. 4);
- an indication that the text of the act has been translated for a foreigner who doesn't speak the official language (Article 40 paragraph 5);
- a record of when and to whom the notary public issued a copy of the notarial act;
- the amount of the fee and costs collected (Article 153, paragraph 1,3,4);
- the place, date and time of drafting the notarial act;
- signatures of the participants and notaries, and the seal and stamp of the notaries (Article 40 paragraph 7).

**Notice:** The place, date and time of compilation are a mandatory element of the content of the notarial act, which can be indicated in the introductory or final part or in both places. Remedies and warnings can be inserted at the end of the document.

## **The technique of drafting a notarial act**

The technique of drafting a notarial act is a very important aspect of notarial activity, and it is clearly described by the norms of the Law on Notaries and the Regulation on the work of notaries.

As a rule, a notarial act is drawn up with electronic or mechanical devices to write text that leave a lasting impression. Exceptionally, in case of emergency, if electronic and mechanical writing devices are not available, a notarial act can also be drawn up in legible handwriting written with permanent ink. A copying machine can be used to make copies and transcriptions, which is located in the notary's office and this will usually happen in practice, because the copy must correspond to the original, which, after being signed and pre-signed by other participating parties and notaries affixing a notary's seal, the most secure and easiest to photocopy, marking it as a dispatch and includes a clause on the certification of dispatch.

The durability of the notarial act is also ensured by prescribing the obligation to write on white paper in A4 format and with a quality that guarantees durability. When drawing up a notarial act, security against forgery must also be taken into account, therefore:

- The spaces in the notarial act must be filled with lines;
- Amounts, dates and other numerical signs must also be written in letters, provided that only the numerical notes of real estate documents and certain provisions of the law or other regulations on which the act is based are excluded;
- The use of abbreviations is prohibited, except for those that are common and known;
- Words and signs should not be written outside the text;
- The notary's act and the number from the relevant register are written, as well as the number of the calendar year, e.g., UZZ - 1/2009;

- In the upper right corner, the seal of the notary public is affixed (Articles 10 and 20 of the Regulation on the work of notaries), which contains the name: Republic of North Macedonia, the sign "NOTERY", the surname and first name of the notary public and the seat of the notary public.

If the notarial act consists of several pages, then the notary public must act as follows:

- Notes are placed on the first page as stated above, and each subsequent page is marked with a sign and number from the relevant register and the number of the calendar year, and the ordinal number of the page;
- All pages with attachments of the notarial act, which are, as such, placed in the notarial act, or a notarial act of one page with attachments, are sewn with a guarantor, so that both ends on the side of back of the back page to be sealed with adhesive tape and notarized, and if the attachments cannot be joined with the notarial act for technical reasons, at the end of the act and before the signature of the parties, participants and other notaries, the text for the number, the content, marks and date of issue attached, documents and appendices are kept on the cover of the file as an integral part of the notarial act;
- All pages (in case the notarial act has several pages) of the original are signed by the notary public and the parties, i.e., witnesses or other notary public for the party who does not know or cannot write, provided that the initials are not placed above the text, but in a visible place, below the text of each page (article 40 of the Law on Notaries and article 21, paragraph 6 of the Procedure Regulation of the Notaries).

The act drawn up by the notary public must be legible, nothing in it must be deleted, the deletion is made with a thin horizontal line, so at the end of the act, before the signature of the parties, other participants and notaries, it must be indicated and thus which should indicate the place and field (number of words and sentences) of the text that is described. The same is done by changing or supplementing the text of the act, all in accordance with the provisions of Article 42 of the Law on Notaries.

At the end of the act, he has drawn up, the notary public signs with his hand and places the seal next to the signature. The parties and other participants sign the act before the notary public. After the signature of the notary public, the act cannot contain anything. If the notarial act does not contain the notary's signature, seal, then such act does not have the status of a public document. If the party is illiterate or cannot sign for any reason, this must be stated in the act. In that case, during the drafting of the act, there must be two written witnesses chosen by the party or another notary public, before whom the party puts a fingerprint, and the witnesses or another notary public confirm this.

## **Conclusion**

Notarial acts are public documents for legal matters, declarations of will and facts compiled by a notary public (notarial minutes and minutes of confirmation of a private document), minutes of legal actions and facts followed by a notary public (notarial minutes), certificates of facts which, within the scope of their competence, are confirmed by a notary public (notarial certificates) and verifications of copies, signatures and other data (notarial certificates).

Of all the notarial acts, the most important are the acts related to legal issues and declarations of will (notarial notes), which also have the full probative value of a public document on statements

made before a notary public. Drafting such notarial acts does not mean simply writing the text of the document and certifying it, but also includes the process of teaching and advising the parties. The notary public must act, in the procedure provided by the law relying on the Code of Conduct, where the notary public is presented as a neutral and professional public service provider. The same procedure must be applied to the minutes of confirmation of a private document, which is equated to a notarial register by law.

Above we mentioned the form, the technique and parts provided for the drafting of the notarial act, in which case also the register on the confirmation of a private document that presents a high evidentiary power. Therefore, its importance is also great.

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