

## **WHEN WILL YOU NEED A PUBLIC NOTARY?**

By Peter Baltins, BEc LLB  
Public Notary

**If you have ever had to sign documents intended for use in a foreign country, you may have been told that your signature had to be witnessed by a Public Notary.**

What does a Public Notary do, and why is the office different from that of a Justice of the Peace?

A Public Notary is an officer of the law. It is the Notary's business to authenticate documents through special care and solemnity.

The Public Notary has an interest in making sure that people are who they say they are, and that important documents are what they appear to be. Someone who makes an oath and swears to the authenticity of a document, or of evidence given before a Court, must be conscious of the seriousness of the act.

Penalties for telling untruths can be thought of as either spiritual or temporal, or both. An oath may be sworn on the Bible or other sacred text; or you may prefer to make a non-religious affirmation. A Statutory Declaration (similar to an Affidavit) is made under the *Oaths Act*. You can incur a fine or even imprisonment for making a false statement that you have sworn or affirmed on your oath to be true.

### **Worldwide Recognition**

For reasons of state and national sovereignty, the laws of one jurisdiction may not be recognised across a state or national border. For example, a Justice of the Peace is appointed under state laws, and those laws are the sole source of the Justice's authority to act. However, the Public Notary, whose original authority was ecclesiastically based, enjoys recognition of the status of his or her office almost anywhere in the world. Therefore, people needing to have a document formally recognised in a foreign country, will seek out the services of a Public Notary to certify its genuineness for them, confident that it will be accepted and acted upon.

Notaries are required:

- To establish beyond doubt the identity of a person coming before them, and
- To ensure that the person understands the nature of the document being executed.

Although the verification of copies of documents or the attestation of signatures is often straightforward, each notarial act requires the affixing of the Notary's seal and the keeping of a record of its use.

Sometimes, the documents are in a foreign language. The Notary is not required to be multi-lingual but a Notary must make a careful decision whether or not the importance and purpose of such a document requires translation into English.

## **The Notary's Seal**

Each Notary has a distinctive seal bearing the Notary's name and often a family crest or distinctive symbol. The seal is impressed into the document that is being authenticated. In former times, melted red wax was used to accept the impression and multiple pages of a document were sewn together, with the tail of the thread embedded in the wax. Nowadays, an adhesive red wafer is more likely to be used and a common stapler will do the job, so long as every page is signed.

The office of a Notary is one of great antiquity probably having its origin in the civil institutions of Ancient Rome. With the decline of the Roman Empire the Emperor of the Holy Roman Empire, as successor to the Roman Emperors, assumed the power to appoint Notaries. This power was also assumed at a later date by the Pope. In England, Notaries were originally Officers of the civil and canon law and acted under Imperial and Papal appointment. In the reign of Henry VIII, and in the wake of the Reformation, the power to appoint Notaries passed to the Archbishop of Canterbury.

For lawyers in New South Wales, one of the last remaining Imperial links with England was severed in 1986 when the power to appoint Notaries for the State of New South Wales was removed from the Archbishop and vested in the Supreme Court of New South Wales.

## **Responsibility to Ensure Authenticity**

Because great weight is given by Courts of law to notarial acts, the Notary carries a very heavy onus of care to see that his or her official acts are carried out with scrupulous care. A Notary has to keep a Notarial Register. Entries in the Register may be produced in evidence as a valuable record should any enquiry be made as to the authenticity of any notarial act.

Other events of recent times have added to the work of Notaries worldwide. Identity fraud and forgery have reached calamitous proportions everywhere, making identity verification now a routine requirement of banks, financial institutions and land title registries.

The rise of terrorism has also meant greater care has had to be exercised in authenticating documents used for obtaining official certificates and passports.

The fees allowed to be charged by Notaries are regulated. The scale ranges from \$90 upwards depending upon the nature of the work undertaken.

**To emphasise the importance of the office, the appointment of a Notary depends on the applicant's character, experience in the law, specialised training and the need for a Notary's services in the locality where he or she intends to practice law.**

Not so long ago, a Notary in the suburbs might have been called upon barely once a week to carry out the duties of his or her office. Times have changed. Ordinary Australians are now looking for the services of a Notary much more frequently. What is driving this increase?

Identity fraud is rampant worldwide. Foreign nationals dealing with Australian traders and travellers are anxious for proof that signatures and documents are genuine before they will accept them and act on them.

Besides, the world is getting smaller every day. Australians are increasingly travelling abroad, marrying foreigners and transacting more business across national borders. Australia's immigrant community, and their descendants, are returning to their former or ancestral homelands to invest, buy second homes or deal with unfinished business (such as land and compensation claims dating from the Second World War).

Another factor is the rise of international terrorism and stringent measures to counter it. Coming our way are new laws around the world to defeat money laundering and terrorist financing.

All this means more work and greater responsibility for the local Notary (whose role is most easily explained as an "international JP").

**Peter Baltins** is a **Public Notary** (appointed in 1994 by the Chief Justice of New South Wales) and his office is at 575 Kingsway Miranda 2228, telephone number 95258100.

Mr Baltins' Notarial seal features the New South Wales Coat of Arms.