

De-Biasing and Equalizing Bargaining Power

Did you know?

In some countries, procedural law for notaries contains special consumer protection safeguards such as a cooling-off-period of two weeks between the moment where the contract draft is sent to the consumer and its notarial authentication.⁴⁰ In that way, consumers have time to carefully think about the transaction and avoid the biases they are subject to at first contact.

Individuals do not always act rationally. They are subject to a variety of biases.⁴¹ For instance, they tend to over-estimate short-term benefits and under-estimate long-term costs (*bounded will-power*),⁴² they over-estimate themselves (*over-confidence-bias*)⁴³ as well as the likelihood of positive outcomes (*optimism-bias*),⁴⁴ and their decision to contract will be influenced by the sympathy with the offeror (*sympathy-bias*).⁴⁵ In addition, bargaining power is unequally distributed among contracting parties.⁴⁶

Notaries intervene in essential areas to de-bias individuals, e.g. the testator under undue influence, and to protect the weaker contracting party, e.g. the consumer who purchases an apartment under construction or the spouse without income that enters into a prenuptial agreement.⁴⁷ In that sense, they can be described as consumer protection agencies.⁴⁸

Notaries are successful in this task for three reasons: First, seeing a notary implies a cooling-off-period (*temporal element*).⁴⁹ Second, notarial intervention implies concluding the contract in a safe place, which can either be the notarial office or the place the individual has chosen to make use of safe notarial online proceedings (*spatial element*).⁵⁰ Third, notaries explain unfavorable clauses to the party concerned, emphasizing potential risks (*substantive element*).⁵¹

Key takeaways: Notaries de-bias individuals and equalize bargaining power. They are an essential element of the consumer protection infrastructure in civil law countries.