

Between Independence and Supervision

Did you know?

Notaries are organized in notary chambers. These are public bodies governed by public law.¹⁰⁰ They channel the knowledge of the profession. This is why notary chambers often participate in legislative proceedings as a think tank when statutes in areas of law related to the profession are enacted.¹⁰¹

Notaries are neutral advisors to the parties. They implement the preferences of individuals and must be shielded against political influence. This is why notaries are – just like judges – independent: in how they draft their contracts and organize their office, they are free.¹⁰²

However, notaries also exercise public power. This requires a dense regulation of the profession. A strict entry control, the highest standards of legal ethics, and supervision by both, chambers and government bodies such as ministries of justice and higher regional courts, are the corner stones of such regulation.¹⁰³

If notaries violate their duties, they face different consequences. First, they personally are subject to civil liability when they breach their duties towards a client (*civil liability*).¹⁰⁴ Second, they face professional sanctions imposed by notary chambers or the ministry of justice (*professional liability*). These sanctions include fines, but can also lead up to an impeachment procedure.¹⁰⁵ Third, notaries are criminally liable (*criminal liability*). Traditional offenses such as fraud, embezzlement, or breach of trust equally apply as those offenses designed for public officials.¹⁰⁶

Key takeaways: The special position of notaries requires not only their independence but also a strong professional regulation based on entry controls, the highest standards of legal ethics, and government supervision.