

Real Estate Law

In most civil law countries, notarial proceedings are mandatory in real estate law. Notaries authenticate sale and purchase agreements and conveyancing deeds¹⁰⁸ but also mortgages, easements, and similar rights in rem. They are also involved in donations, dividing land, and creating condominiums.¹⁰⁹

Did you know?

The German Constitution mentions notaries: whereas article 74 grants the federal government powers to legislate in notarial matters, article 138 restricts this power and subjects any change of the current notarial structure in certain states to the consent of these states. In addition, the principle of equality between men and women, contained in article 3, was drafted by *Elisabeth Selbert*, one of the first female notaries in Germany.¹⁰⁷

There are five main reasons for notarial intervention in real estate law. First, land registers record real property and notaries are the gatekeepers of these registers (*gatekeeper dimension*).¹¹⁰ Second, immovables are expensive (*value dimension*).¹¹¹ Fraud in real estate transactions can lead to people being deprived of their savings and cause their bankruptcy.¹¹² Consumer protection thus plays a paramount role.¹¹³ Third, land does not perish. Legal rights in real estate persist for generations, triggering an increased need for legal certainty (*time dimension*).¹¹⁴ Fourth, land involves public interest (*sovereignty dimension*).¹¹⁵ The intervention of notaries enables government to control the use of land through pre-emption rights and to subject the transfer of sensitive areas to prior public approval. Fifth, given all the stakeholders, real estate transactions are complex (*management dimension*). Notaries organize the contract execution for the parties and relieve individuals from bureaucratic communication by acting as transactional managers.¹¹⁶

Key takeaways: Notaries are involved in real estate transactions such as sale and purchase agreements, conveyancing deeds, mortgages and easements.