

## *Did you know?*

Notaries sometimes even act as judges in litigation. For instance, the Constitutional Court of Bavaria regularly counts one or two notaries among its judges<sup>82</sup> and the German Federal Court of Justice comprises notaries at the side of full-time judges in lawsuits against notaries for professional misconduct.<sup>83</sup>

## Relieving the Judiciary

Notaries relieve the judiciary. The first way of doing so is to avoid litigation ex post by relying on authentication ex ante.<sup>84</sup> At least four dimensions can be distinguished in this context. First, the authentication procedure optimizes contracts, leaving little room for ambiguity.<sup>85</sup> Second, it provides evidence, allowing to predict and thereby avoid court decisions.<sup>86</sup> This evidence dimension also concerns the occurrence of facts.<sup>87</sup> Indeed, courts sometimes outsource parts of their evidence proceedings to notaries.<sup>88</sup> Third, authentic acts serve as anticipated judgments,<sup>89</sup> making it superfluous to sue to obtain a title for foreclosure. Fourth, even if a dispute has arisen, notaries still prevent litigation since some civil law countries require parties to seek mediation at a notarial office before they are allowed to file a lawsuit.<sup>90</sup>

The second way of relieving the judiciary concerns court proceedings in non-contentious matters. Sometimes, notaries entirely replace judges. For instance, in some civil law countries, notaries can perform marriages and pronounce divorces, provided that everyone agrees.<sup>91</sup> Sometimes, they make judicial proceedings such as the nomination of a custodian superfluous because notarial general powers of attorney allow for sufficient representation.<sup>92</sup> Sometimes, they leave the judicial decision in place but prepare it in significant ways, e.g. by drafting the application for an adoption, a recognition of paternity, or a certificate of inheritance.<sup>93</sup>

**Key takeaways:** Notaries relieve the judiciary by avoiding litigation and non-contentious court proceedings.