

Family Law

Did you know?

Just like judges and lawyers, notaries also sometimes act as arbitrators. In Germany, for instance, the German Notary Arbitration Court is an arbitral institution that applies the German Code of Civil Procedure in areas of law related to the notarial profession.¹³⁶

Notaries are also entrusted with decisive transactions in family law. The first set of transactions includes prenuptial agreements and divorce settlements and concerns the relationship between spouses. Core questions are matrimonial property regimes, the division of assets and pension rights, alimony, and child custody.¹³⁷ In some countries, notaries can also directly perform marriages and pronounce divorces.¹³⁸ The second set of transactions includes acts of affiliation such as adoptions and recognitions of paternity and concerns the relationship between parents and children.¹³⁹ Finally, notaries are also involved when individuals want to change their name.¹⁴⁰

Yet again, we find five reasons for notarial intervention. First, marital status and changes of names affect registers, triggering the need for notaries as gatekeepers (*gatekeeper dimension*).¹⁴¹ Second, just like successions, changes in marital status may lead to great economic consequences in situations of particular vulnerability, requiring special protection (*value dimension*).¹⁴² Third, marital status and affiliation have far-reaching effects in the future and bring a special need for legal certainty (*time dimension*). Fourth, public interest is involved, especially when it comes to child custody (*sovereignty dimension*). Finally, marital changes or changes of affiliation involve bureaucratic communication with different authorities where the managing capacity of notaries is required (*management dimension*).¹⁴³

Key takeaways: Notaries draft prenuptial agreements and divorce settlements. They are also involved when it comes to adoption, recognition of paternity, and changes of names.