

Powers of Attorney

Notaries draft powers of attorney. Sometimes, the law requires the intervention of a notary. For instance, if the principal wants to grant powers to make changes related to public registers, the gatekeeping function of notaries is at stake (*gatekeeper dimension*).¹⁴⁵ However, even if the law does not require notarial form,¹⁴⁶ individuals opt in to the notarial proceedings because they value two of its core advantages.

First, they receive legal advice and certainty. Potential contracting parties can rely on the official document, which in turn decreases information costs and increases joint surplus.¹⁴⁷ Some countries further develop this aspect by instituting a public register of powers of attorney.¹⁴⁸ Legal certainty is also of great importance because powers of attorney can structure dealings for a long period of time (*time dimension*).

Second, individuals receive protection (*value dimension*). Powers of attorney are dangerous due to agency costs as the interests of the principal and the agent are not always aligned.¹⁴⁹ Especially when individuals grant plenary powers in case of their mental incapacity or even after death, which is possible in some countries,¹⁵⁰ they value the safe space of the notarial office. Indeed, these powers of attorney often have consequences as far-reaching as guardianships or wills.¹⁵¹

Key takeaways: Even though the law does not always require it, individuals often authenticate powers of attorney because they value legal certainty and protection.

Did you know?

Notaries are not only experts in private law. Indeed, by providing services as a one-stop-shop, they also specialize in certain areas of administrative law, notably zoning law, environmental law, and tax law.¹⁴⁴