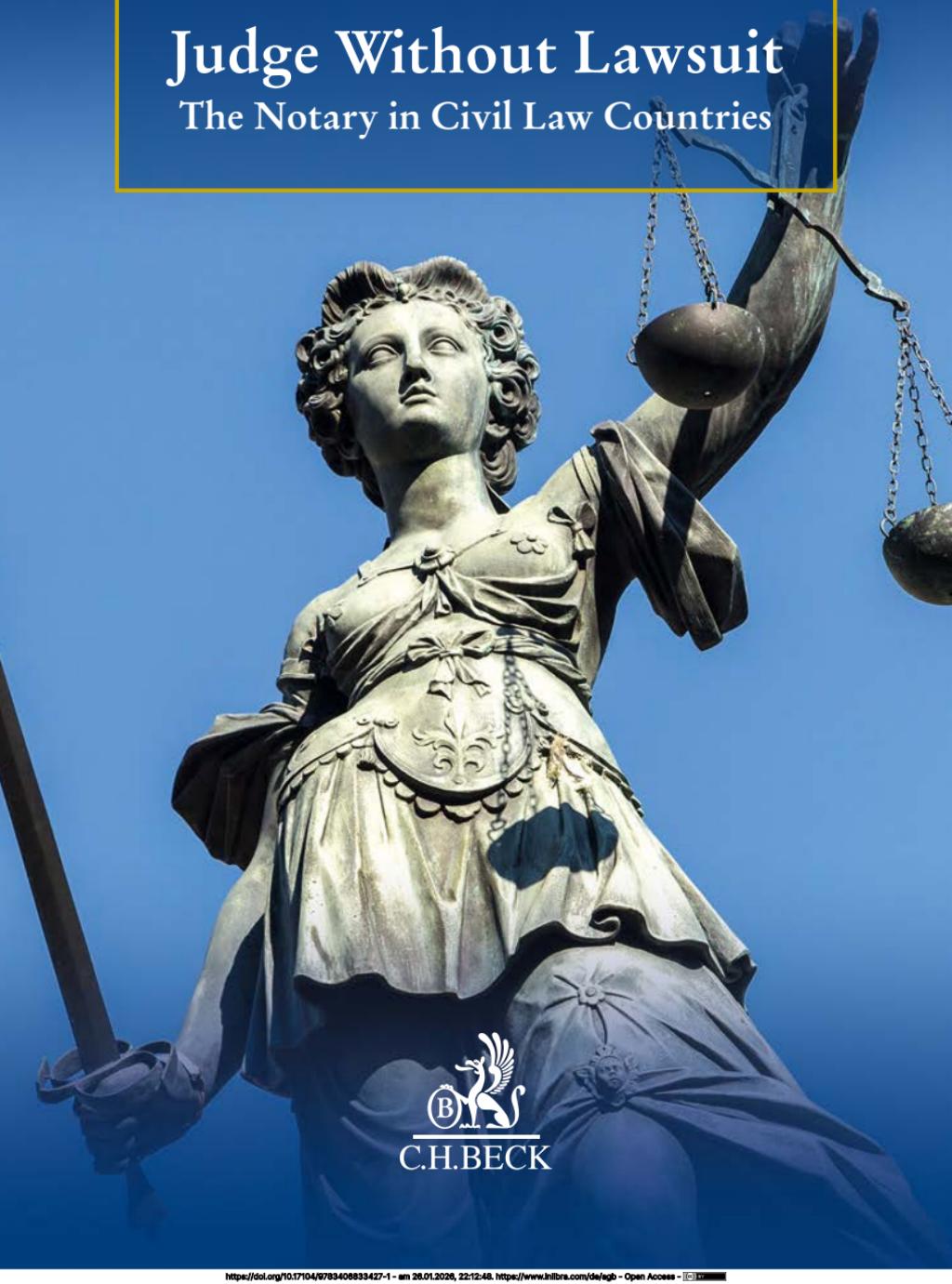


Jens Bormann and Philip M. Bender

Judge Without Lawsuit

The Notary in Civil Law Countries




C.H.BECK

Jens Bormann and Philip M. Bender
Judge Without Lawsuit

Jens Bormann (Editor) and Philip M. Bender (Author)

Judge Without Lawsuit
The Notary in Civil Law Countries
Explainer



A Project of the
UINL Vice Presidency for Europe
2023–2025



Foreword

Printed with the support of the German Federal Chamber of Notaries



Designed by Isabel Krüger
Photo title: travelview/iStock via Getty Images

beck.de

ISBN 978-3-406-82607-8

ISBN ePDF: 978-3-406-83342-7

© 2024 Verlag C.H.Beck oHG
Wilhelmsstraße 9, 80801 Munich, Germany

Printed and bound by Beltz Grafische Betriebe GmbH
Am Fliegerhorst 8, 99947 Bad Langensalza, Germany



chbeck.de/nachhaltig

Printed on acid-free, age-resistant paper
(made from chlorine-free bleached pulp)

This work is licensed under the license "Creative Commons Attribution-ShareAlike 4.0 International" (CC BY-SA 4.0). The terms of the Creative Commons license apply exclusively to the text created by the author of the publication. The reuse of material from other sources marked accordingly, such as illustrations, photographs or text excerpts, may require further permission for use from the relevant rights holder.

Civil law notaries play a central role in the preventive administration of justice and the implementation of the rule of law in the digital age. At the same time, we feel that people know very little about them. This is generally true for those outside the notarial sphere, but it particularly applies to representatives from the common law world, where notaries, as understood in the civil law context, do not exist. However, our profession depends on being understood. Otherwise, national policy makers or international experts – be it from the World Bank or the OECD – will not appreciate the added value that a functioning system of preventive justice provides.

This is why we made this explainer a priority of the German Vice-Presidency for Europe within the International Union of Notaries (UINL). It is written for the curious reader who just wants to acquire some fun facts about our profession, for the common law jurist interested in exchange, for policy makers and experts who have to draft regulation in notarial matters, and for our colleagues from all around the world who wish to reflect on their daily business.

Berlin, September 2024

Jens Bormann
Philip M. Bender

The editor **Jens Bormann**, Ph.D. (Albert Ludwig University of Freiburg), LL.M. (Harvard), is a Notary in Ratingen and Visiting Professor at the Leibniz University of Hannover. He currently acts as UINL Vice-President for Europe and as President of the German Federal Chamber of Notaries.

The author **Philip M. Bender**, Ph.D. (Ludwig Maximilian University of Munich), LL.M. (Yale), Maître en droit (Paris II/Panthéon-Assas), is a Notary Candidate in Bavaria. He currently works as a member of the directorate of the German Federal Chamber of Notaries.

Table of Contents

Executive Summary	1
Part I: Serving the Interests of Contracting Parties	3
Chapter 1: Judge Without Lawsuit	7
Chapter 2: Neutral Advisor	9
Chapter 3: Personalizing Default Rules	11
Chapter 4: Between Legal and Ordinary Language	13
Chapter 5: Managing the One-Stop-Shop	15
Chapter 6: De-Biasing and Equalizing Bargaining Power	17
Part II: Serving the Interests of Society	19
Chapter 7: Gatekeeper of Registers	23
Chapter 8: Fighting Money Laundering & Other Crimes	25
Chapter 9: Promoting Distributive Justice	27
Chapter 10: Relieving the Judiciary	29
Chapter 11: Frontrunners of Digitalization	31
Chapter 12: Between Independence and Supervision	33
Part III: Areas of Law	35
Chapter 13: Real Estate Law	39
Chapter 14: Company Law	41
Chapter 15: Succession Law	43
Chapter 16: Family Law	45
Chapter 17: Powers of Attorney	47
Chapter 18: Conflict of Laws	49
Endnotes	51
Bibliography	69
Index	77