

Gatekeeper of Registers

Individuals do not only contract with humans but also with partnerships and corporations. Their existence and their representatives are not obvious. Likewise, individuals do not only sell moveables but also shares and land. Here, defining what is sold and determining who owns it is crucial. Civil law systems fulfill these tasks through public registers.⁵⁴ Land registers define property rights in real estates, commercial registers define property rights in shares,⁵⁵ but they also provide information on your non-human contracting partner. Sometimes, these registers even enable bona fide purchases.⁵⁶ Thus, instead of incurring the costs of due diligence, title search, and title insurance,⁵⁷ individuals may fully rely on public registers.

Notaries are gatekeepers of these public registers.⁵⁸ They ensure that, as a matter of principle, only valid transactions are registered.⁵⁹ Without this notarial high-quality control, the accuracy of public registers would suffer and one of two problems would arise: in a system *without* bona fide purchases, buyers could not rely on registers, depriving them of their core function; in a system *with* bona fide purchases, individuals would regularly be expropriated and property rights invalidated.⁶⁰

Key takeaways: Notaries are gatekeepers of public registers and guarantee their trustworthiness. Public registers, in turn, make due diligence, title search, and title insurance obsolete, thereby lowering transaction costs.

Did you know?

In civil law countries, citizens have a legal right to notarial authentication: if not illegal, notaries have to implement their preferences. This right is part of the broader right of access to justice because notaries are part of the preventive administration of justice.⁵³