

# The Role of Notaries in Real Estate Transactions - Current Challenges and Perspective on the Future

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## Abstract

The status and function of civil law notaries have come under European Commission scrutiny in recent years. An academic study performed by the Centre of European Law and Politics, University of Bremen (ZERP) for the Commission has concluded that real estate conveyancing services may be more economically performed by private lawyers or even real estate brokers than by traditional highly regulated civil law notaries. A complementary study commissioned by the Conseil des Notariats de l'Union Européenne (CNUE) and conducted by the speaker investigated in depth the conveyancing institutions and practices in 5 EU Member states, Estonia, France, Germany, Sweden and the UK. This study concluded that conveyancing costs tend to be lower in the notarial jurisdictions studied than in Sweden or the UK, especially for lower value transactions. The quality of services provided in the notarial jurisdictions studied also appears to be higher than in the UK or in Sweden.

Looking fo the future, the progress toward electronic land registers and e-conveyancing is particularly promising in notarial jurisdictions. It seems likely that in the foreseeable future the last major bottleneck in conveyancing, the examination of instruments by registry officials might be eliminated by assigning this function to the notary, who would effectuate land conveyances instantaneously by direct electronic access to the register. It is hard to imagine that a similar development can occur in jurisdictions in which conveyancing is performed by lawyers or brokers.

At the same time, notaries must be vigilant to maintain the hallmarks of their profession, a high level of skill and complete independence and impartiality. Even the appearance of conflicts of interest should be avoided, as should arrangements which seem to favor "repeat players" such as real estate developers and banks. Fee regulation of notaries as well as measures to limit numbers and grant exclusive geographic competencies will be under constant scrutiny. The ability to compare notarial costs throughout the EU will tend to make higher level mandatory fee structures more obvious and harder to justify.

Notaries can look forward to a bright future in which their core competence as skilled and impartial conveyancers of real estate can be further enhanced by e-conveyancing. It is important that notaries educate political decision-makers as well as the populous at large of the unique characteristics of their function that reflect high quality, impartiality and security for transaction participants. They should also be mindful that the regulations that define and protect the profession also implement the public interest in general.