



**The Drafting of Notarial Acts
and
Notarial Certificates**

with

Precedents

By

**Dr Eamonn G Hall
Notary Public**

The Faculty of Notaries Public in Ireland
Institute of Notarial Studies
Email: info@ehall.ie
Web: www.ehall.ie and www.notaryinstitute.ie
Tel: 087 322 9480

‘The Lord Chancellor observed that a Notary Public by the Law of Nations has credit everywhere; the Court will therefore give credit to him....’

(Law Report), Lord Eldon, Lord Chancellor,
Hutcheon v Mannington
(1802) 6 Ves. 823 at 824.

‘I know thou art a Public Notary,
and such stand in law for a
dozen witnesses.’

Philip Massinger
A New Way to Pay Old Debt (1625)
(in the mouth of Sir Giles Overreach)

Introduction

The drafting of a notarial act and certificate is at the heart of the professional responsibility of the notary in Ireland. Probably the best and most modern definition of a notarial act is the definition adopted by the *2012 Special Commission of the Hague Conference on Private International Law on ‘The Practical Operation of the Apostille Convention’*.¹ There, a ‘notarial act’ is defined as

‘an instrument or certificate drawn up by a notary that sets out or perfects a legal obligation or formally records or verifies a fact or something that has been said, done or agreed.’

The definition of a ‘notarial act’ (as above) continues:

¹ *Handbook on the Practical Operation of the Apostille Convention*, Hague Conference on Private International Law, The Hague (2012), para 125. The Special Commission was attended by 162 participants from 75 States and international organisations including representatives of the Faculty of Notaries Public in Ireland as part of the United Kingdom and Ireland Notarial Forum.

‘When authenticated by the signature and official seal of the notary, the notarial act is a public document under Article 1(2)(c) of *The Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (known generally as the ‘Apostille Convention’).

Notarial Certificates

Dean Emeritus E. Rory O'Connor of the Faculty of Notaries Public in Ireland in his book, *The Irish Notary* (1987) together with *The Supplement* (Hall & O'Connor) (2006) set out various precedents of a ‘notarial act’ and notarial certificate.

A notarial 'act' will comprise the following:

- The date of the act;
- The name and address of the notary;
- Confirmation of the presence and identity of the appearer (where applicable);
- The place of the notarial act;
- The instrument, deed or essence of what is being certified or the setting out or perfection of a legal obligation, or the formally recording or verification of a fact or of something that has been said, done or agreed;
- Signature and seal of the notary.

The first principle that must be stated is that a notarial act or certificate contains some narrative or form of words about what the notary is in fact doing. A notarial signature and seal that are not governed by some narrative or form of words may fail to be recognised in another jurisdiction. The definition of a ‘notarial act’ above should be kept constantly in mind – together with the fact that the narrative or form of words used by the notary that refers to an underlying document becomes a ‘public document’ for the purposes of the Apostille Convention by virtue of the notary signing and sealing his or her form of certificate.

In general, it is recommended that a notarial act/certificate (a separate independent document) should be attached to the front of the document, record, or transaction to which it pertains. There is a strong body of learned opinion that notarial certificates should not be merely endorsed on deeds, records or transactions (unless specifically requested by the foreign party in instances such as a deed and related documents).

However, it would be usual practice to have a standard formula of words (be it in the form of a stamp or otherwise) certifying, for example, that a copy passport is a true copy of an original passport as produced to the notary, and to have those words endorsed on the copy passport or other similar document. One may make a distinction between a copy passport or such like document on the one hand, and a memorandum or articles of association of a body corporate or a certificate that a power of attorney was executed in the presence of the notary – on the other. Notarial certificates relating to a memorandum and articles of association of a company, for example, might demand more notarial attention.

There is the concept of documents or instruments being 'legally bound'. It is the declared practice of some embassies to refuse to legalise documents or instruments that are not 'legally bound'. The concept relates to attaching together all the pages of a document or documents (the subject of a notarial act or certificate) in such a manner that none of the relevant pages of the document(s) can be easily detached with a view to substituting another page or indeed other document in its place. The notarial act/ certificate and associated documents should be so bound together that they constitute one compact bound document.

It is in the context of 'binding' documents (the notarial act/certificate and the document or documents to which the notarial act/certificate refers) that the use of 'eyelets' or a punch to make holes come into use. Ribbons are also of use in this context. The ends of a ribbon holding the documents together may be secured by a wafer (impressed with the seal of the Notary). The use of staples (without any additional protection) to bind documents is not favoured because staples can be relatively easily undone. Some embassies will not accept documents merely stapled when 'legalisation' is sought.

Margins on a notarial act/certificate should allow for one inch on the left hand side. This facilitates binding and photocopying. There should be no blank spaces in the notarial certificate and in the documents the subject of the notarial certificate.

The documents should run in a seamless manner. It is best practice for a notary to number each page (page x of y etc) and to initial each page of the 'notarised' documents together with the appearer.

The 'Long Form' Notarial Certificate (so designated to distinguish it from a form of notarial certificate endorsed on a document) is that which is separate from but attached to the relevant underlying document, record or transaction.

In precedents, one frequently comes across the following opening words on the 'Long Form Notarial Certificate':

‘To All To Whom These Presents Shall Come, Greetings.’

This is a beautiful salutation, but the words cause problems for translators. The word 'presents' in English is both a noun and a verb. Persons will be familiar with the concept of 'presents' as 'gifts'. My view is that one possible understanding of 'presents' in the salutation may create a serious misunderstanding in the mind of a translator or a foreign official in this 'ethical' age (an age in which ethics are supposed to be of the highest order). Due to possible translation difficulties, the present writer has discontinued the practice of using this salutation. He has substituted the words 'BE IT KNOWN' for the more grandiose 'TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS'. However, this is merely a matter of individual style.

LONG FORM NOTARIAL CERTIFICATE

A suggested 'Long Form Notarial Certificate' which may be attached to an appearer's document, deed, record or transaction is set out as follows:

Precedent

CERTIFICATE OF NOTARY PUBLIC

OF

IRELAND

BE IT KNOWN that I [NP] of [practice address], Notary Public Commissioned for life by the Chief Justice and President of the Supreme Court of Ireland [these words are used in Article 34.4.2 of the Irish Constitution] **CERTIFY** that [AB] of [specify address] identified to me by production of [specify document, preferably a passport] [or duly identified to me] **APPEARED** before me this day and signed in my presence the document attached to this Notarial Act and Notarial Certificate and at the back page of which I have placed details of my Notarial office.

IN FAITH AND TESTIMONY, I have set my hand and affixed my seal this day of 20XX

Notary Public

[SEAL]

Precedent

The next precedent sets out or records the testimony of an appearer where it is not easily possible for the notary to check the absolute authenticity or the precise nature of the document in question.

CERTIFICATE OF NOTARY PUBLIC

OF

IRELAND

BE IT KNOWN that I, [NP] of [practice address], Notary Public, Commissioned for life by the Chief Justice and the President of the Supreme Court of Ireland, **CERTIFY** that AB, duly identified to me, **TESTIFIED** on oath before me this day that the document attached to this Notarial Act and Notarial Certificate (upon which on the back page I have set out details of my Notarial Office) was [for example] a true copy of the original.

IN FAITH AND TESTIMONY, I have set my hand and affixed my seal this [specify date]

Notary Public

Seal

Note

A record of the testimony by an appearer (whether by way of a statutory declaration or evidence on oath) may be set out as above and this is a useful manner of a formal record which is acceptable abroad when the notary cannot certify some matter from his/her own personal knowledge.

The appearer may be informed that a person who makes a statutory declaration, for example, which to his or her knowledge is false or misleading in any material respect shall be guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both. [Section 6 of the Statutory Declarations Act 1938 as amended by substitution by section 51 of the Civil Law (Miscellaneous Provisions) Act 2008.

Precedent No 3

(Original document in a foreign language and a translation)

CERTIFICATE OF NOTARY PUBLIC

OF

IRELAND

BE IT KNOWN that I, [NP] of [practice address], Notary Public, Commissioned for life by the Chief Justice and President of the Supreme Court of Ireland, **CERTIFY** that AB, duly identified to me, **TESTIFIED** before me this day (or made a statutory declaration before me this day) that the documents attached to this Notarial Act and Certificate (upon which on the back page of each I have set out details of my Notarial Office) constitute a true copy of the original and a true translation of the said document as produced to me.

IN FAITH AND TESTIMONY I have set my hand and affixed my seal on this [specify date]

Notary Public

[Seal]

May a Notarial Act and Notarial Certificate ever be given by a Notary in the context of the execution of a document where the Appearer (Signer) is not physically in the Notary's Presence at the time of execution of the Document?

The issue arises in practice whether a notary may ever certify the genuineness of a signature of a person who was not in the presence of the notary when the document was signed. One issue is absolutely clear – a notary may never certify that a person signed a document in his or her presence where in fact the notary did not witness in person the actual execution of the document by the person in question.

There is a genuine difference of opinion among notaries as to whether a notary should ever certify that a person signed a document if the Notary did not actually witness and see the person in question actually sign the document at issue.

In this context, remember the notary is not certifying that the person signed the document in his/her presence but that the document in question attached to the notarial act/ notarial certificate was in fact signed by the person in question.

It is appropriate here to quote the Opinion of the Council of the Notaries Society of England and Wales in relation to this issue. The Council of the Notaries Society of England and Wales state that a notarial certificate may be given in the circumstances outlined in the previous paragraphs but should only be used in exceptional circumstances and in accordance with the provisions of the Opinion which is quoted here:

‘OPINION OF COUNCIL OF THE NOTARIES SOCIETY OF ENGLAND AND WALES

1. On a prior occasion the notary must have first seen the signatory affix his signature to a form which is retained in the protocol file of the Notary;
2. The notary should check the continued existence of the signature regularly;

3. If the signatory is representative of an organisation or company, his continued authority should be checked regularly;
4. The notary should at the time of verifying the signature take such steps as are reasonable to ensure that the signatory has in fact signed the particular documents;
5. The certificate must be unequivocal and must not state or imply that the signature has been affixed in the presence of the notary or that the document is/has been properly executed;
6. The notary must refuse to certify the unattested signature if full attestation by a notary is required to complete the formal requirements for the proper execution of the document...
7. Notaries must be aware of the risk of issuing such certificates and should, if in any doubt at all, decline to act.'

The present writer adopts a form of certificate from the Notaries Society (England and Wales) subject to the provisos specified in the Opinion of the Council of the Notaries Society of England and Wales:

CERTIFICATE OF NOTARY PUBLIC

OF

IRELAND

BE IT KNOWN That I [NP] of [practice address], Notary Public, Commissioned for life by the Chief Justice and President of the Supreme Court of Ireland **CERTIFY** that AB, duly identified to me, signed the document affixed to this Notarial Act and Notarial Certificate (and at the back of which I have placed details of my Notarial Office for identification purposes).

or

I **CERTIFY** that the signature set out at the foot of the annexed document (and at the back of which I have placed details of my Notarial Office for identification purposes) is genuine.

IN FAITH AND TESTIMONY I have set my hand and affixed my seal
this [specify date]

Notary Public

[SEAL]

[No view is expressed by the present writer as to what the official stance of the Faculty of Notaries Public in Ireland is in relation to the scenario set out in the previous paragraphs, but the details above are set out for information only.]

However, it is imperative that a notary would not mislead any possible reader of his/her notarial act/certificate and must never state something to be true – if it is not the full truth.]

One of the frequently recurring notarial acts required of the notary is that a document is a true copy of an original or a version of this fact.

Short Form Notarial Act and Notarial Certificate

As stated earlier, the best practice is that the notarial certificate is attached to the front of the document, record or transaction to which the certificate relates.

However, for one reason or another, a notary may feel compelled to endorse a notarial act/certificate on a document. Some notaries use a prepared stamp and fill in the blanks.

Precedent

Draft of a ‘Short Form’ Certificate in relation to a Copy Document

Certificate of Notary Public of Ireland

I certify the within photocopy is a copy of a document which was produced to me and represented under oath to be a copy of the original.

Dated this [] day of [] 20XX.

[NP] Notary Public
Address
Commissioned for life

[Seal]

OR (perhaps a better version if the Notary's stamp allows it in terms of space)

Certificate of Notary Public of Ireland

I certify the within photocopy is a copy of a document produced to me and represented under oath by the appearer this day to be a copy of the original.

Dated this [] day of [] 20XX.

[NP] Notary Public
Address
Commissioned for life

[Seal]

Notaries are frequently requested to certify that a document as produced to him/her is an original. If a notary has only one relevant stamp relating to a photocopy, the relevant words relating to a photocopy can be deleted ideally by a black pen blocking out the irrelevant words and the amended form of words should be initialled by the notary. A 'Short Form Certificate' i.e. a stamp or in handwriting, may use the following words:

Certificate of Notary Public of Ireland

I certify that the within document was represented under oath by the
appearer this day to be an original.

Dated this [] day of [] 20XX.

Notary Public

Address

Commissioned for Life

[Seal]

The issue has been raised as to whether the certificate of the notary above
in relation to a document being an original or being a true copy of an
original is too absolute and whether the notary should qualify the
certificate by the use of appropriate words. The following certificate is
sometimes used in England and Wales in such a situation:

Certificate of Notary Public of Ireland

I certify that the within document as produced to me bears all the
hallmarks of an original.

Dated [] day of [] 20XX

Notary Public

Address

Commissioned for Life

[Seal]

The words ‘bear all the hallmarks’ and ‘an original as produced to me’
offer some legal comfort to the notary. However, there has been a
reluctance on the part of receiving authorities to accept words such as
‘bear all the hallmarks of’.

There is merit in the taking of a statutory declaration or oath from the appearer – as set out later in this paper. If the declaration turns out to be false, the appearer is liable to a criminal prosecution.

‘Generic Notarial Act/Certificate’

I have seen the circulation in some quarters of what has been termed a ‘Generic Notarial Act/Certificate’. Its use is not recommended, as it is unclear as to what precisely the effect of any such certificate is and, accordingly, the notary may be liable where he or she did not intend the notarial act/ notarial certificate to be so interpreted.

The so-called ‘generic’ form of notarial act/certificate that I have seen may be quoted here:

Certificate of Notary Public of Ireland

A Notarial Act has been required of me, [NP], a Notary Public, of [practice address] Commissioned for life by the Chief Justice of Ireland.

IN FAITH AND TESTIMONY, I have subscribed my name and affixed my official seal on [specify date].

Notary Public

Address

Commissioned for Life

[Seal]

As stated, the question arises as to what exactly is the notary saying by using the above formula? Nothing much really.

Statutory Declaration (Incorporating a Form of Authorisation)

Section 1(1) of the *Statutory Declarations Act 1938* (as amended) provides that it shall be lawful for a notary public, commissioner for oaths, peace commissioner or person authorised by law to take and receive a [statutory] declaration in writing of any person making the same

before him/her in the form set out in the schedule to the 1938 Act as amended by the Civil Law Miscellaneous Provisions Act 2008.

The present writer has frequently seen in use and it is often convenient to combine a form of statutory declaration and an authorisation/ power of attorney in a statutory declaration. This may be in a pre-prepared form

and the handwriting of the notary may be inserted in the appropriate places. This may be useful in terms of a house call or otherwise. The following wording may be considered:

**CERTIFICATE OF NOTARY PUBLIC OF IRELAND
AND
STATUTORY DECLARATION AND AUTHORISATION**

BE IT KNOWN that I, [NP] of [practice address], Notary Public, Commissioned for life by the Chief Justice and President of the Supreme Court of Ireland **CERTIFY** that [AB] whose identity has been established to me before the taking of this Declaration by the production to me of Passport [specify number] issued on [] by the authorities of [issuing State] **MADE** the following Statutory Declaration and Authorisation in my presence.

STATUTORY DECLARATION AND AUTHORISATION

I, [AB] of [] in the County of [] do solemnly and sincerely declare as follows:

(Set out here purpose of declaration:)
(for example)

I authorise [CD] of [] holder of Passport No [] issued by the authorities of [issuing State] to obtain a new Driving Licence in my name, my existing Driving Licence having expired on [insert date] ‘

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the *Statutory Declarations Act 1938* of Ireland as amended.

DECLARED before me [NP],
Notary Public, by [AB] whose
identity has been established to me
before the taking of this Declaration
and Authorisation by the production of
Passport No [] issued on [date]
by the authorities of [issuing State]
which is an authority recognised by
the Irish Government [See other
alternatives in the Statutory Declarations
Act 1938 as amended] at [place of
signature] this day of 20XX.

Signature of AB

SIGNATURE OF NOTARY PUBLIC

[SEAL]

Conclusion

The drafting of a notarial act/notarial certificate requires care on the part of the notary. Frequently, persons (appearers) will present the notary with a document or documents merely stating that they require the document(s) to be 'notarised'. The appearer will probably not understand the significance of the word 'notarisation'.

The notary must be certain he or she can give the relevant notarial act/certificate. The notary must be conscious of the fact that in the context of international law, his or her notarial act/notarial certificate becomes a 'public document' when signed and sealed by the notary. The notary will thus have added significant value to the document in question which will be relied upon by the authorities of other states.

End of paper.

Dr Eamonn G Hall (2014) (Copyright)