

# NEW ZEALAND SOCIETY OF NOTARIES

## CODE OF NOTARIAL PRACTICE

### PART I: PRELIMINARY

#### 1. Citation and commencement

- 1.1. These rules may be cited as the Code of Notarial Practice.
- 1.2. These rules were adopted by the Society on the 17<sup>th</sup> day of August 2018.

#### 2. Interpretation

- 2.1. In these rules:-
  - 2.1.1. “**affairs**” means matters that are the concern or responsibility of a particular person;
  - 2.1.2. “**arrangement**” means any express or tacit agreement between a notary and another person whether contractually binding or not;
  - 2.1.3. “**client**” means any person who has instructed a notary to carry out notarial services;
  - 2.1.4. “**Council**” means the Council of the Society;
  - 2.1.5. “**firm**” includes a sole practitioner and professional partnership (which expression shall include a limited liability partnership and any other body corporate) the members of which are authorised to conduct legal practice as such;
  - 2.1.6. “**lawyer**” has the meaning given to that term in the Lawyers and Conveyancers Act 2006;
  - 2.1.7. “**Master**” means the Master of the Faculties;
  - 2.1.8. “**notarial act**” means any act that has validity by virtue only of its preparation, performance, authentication, attestation or verification by a notary and includes any such act carried out by electronic means;
  - 2.1.9. “**notarial misconduct**” means:
    - (a) fraudulent conduct;
    - (b) conduct falling seriously below the standard of service reasonably to be expected of a public notary; or
    - (c) other serious misconduct which may include failure to observe the requirements of this Code of Notarial Practice;
  - 2.1.10. “**notary**” means a person holding office in New Zealand following the grant of a notarial faculty to that person;
  - 2.1.11. “**official document**” means any document issued by:
    - (a) the Crown;
    - (b) any department of the New Zealand Government;

- (c) any Crown Entity as defined by the Crown Entities Act 2004; or
- (d) any university, polytechnic, tertiary institute or private training establishment authorised to issue or award qualifications by the Qualifications Authority;

~~2.1.12.~~ **“partner”** means a person with whom the notary cohabits or with whom the notary has an ongoing relationship of a personal nature and includes a person of the same gender;

~~2.1.13.~~~~2.1.12.~~ **“performance”** includes execution, completion and carrying out;

~~2.1.14.~~~~2.1.13.~~ **“person”** includes a body corporate or unincorporated association or group of persons;

~~2.1.15.~~~~2.1.14.~~ **“principles”** means the general principles set out in clause 4;

~~2.1.16.~~~~2.1.15.~~ **“Qualifications Authority”** has the meaning given to that term in section 159 of the Education Act 1989 or any amended or substituted statutory definition;

~~2.1.17.~~~~2.1.16.~~ **“Society”** means the New Zealand Society of Notaries Incorporated.

2.2. For the purposes of these rules:

- 2.2.1. a notary’s practice includes the preparation and performance of notarial acts and any other service undertaken as a notary whether or not such service may only be undertaken by a notary;
- 2.2.2. reference to any other rules which govern the practice of a notary in New Zealand and made by the Society shall include any rules and regulations made in substitution;
- 2.2.3. words importing the masculine gender shall include the feminine gender and words importing the singular shall where the context so admits include the plural and vice versa.

## **PART II: PRACTICE AS A NOTARY**

### **3. Oath of office and recognition of notarial acts**

- 3.1. A notary shall exercise the office of notary in accordance with the oath or declaration made at the time of the grant of a notarial faculty to that notary and shall offer appropriate notarial services to any person lawfully and reasonably requiring the same except where to do so would be a breach of this code.
- 3.2. All persons who practise as a notary in New Zealand must become and remain a member of the Society.
- 3.3. A notary entitled to practise as a notary in New Zealand may issue notarial acts in public or private form intended for use in New Zealand and all other jurisdictions.

### **4. General principles**

- 4.1. Without prejudice to clause 3.1 above, a notary shall exercise the office of a notary at all times in accordance with the principles set out below and these rules shall be read in accordance with such principles.
- 4.2. A notary shall:
  - 4.2.1. act with integrity;

- 4.2.2. maintain independence and impartiality;
- 4.2.3. provide a prompt and proper standard of service;
- 4.2.4. act in a way that maintains the trust in the office of notary which the public may reasonably expect;
- 4.2.5. comply with all legal and regulatory obligations and cooperate with the Master and any persons or body appointed by the Master in exercise of the Master's regulatory functions.

## **5. Code of Notarial Practice**

- 5.1. A notary shall at all times have regard to and comply with this Code of Notarial Practice and any other Code or Codes of Notarial Practice approved by the Society.
- 5.2. Failure to comply with this rule shall be prima facie evidence of notarial misconduct.

## **6. Bankruptcy**

- 6.1. Subject to clause 6.2, any notary who is adjudicated bankrupt shall not practise as a notary with effect from the date on which such notary is adjudicated bankrupt.
- 6.2. Any notary adjudicated bankrupt may upon receipt of the written consent of the Master resume practice as a notary following the discharge from bankruptcy of such notary.

## **7. Obtaining instructions**

- 7.1. A notary shall not directly or indirectly obtain or attempt to obtain instructions for professional work or permit another person to do so on his or her behalf, or do anything in the course of practising as a notary, in any manner which compromises or impairs or is likely to compromise or impair any of the following:
  - 7.1.1. the principles;
  - 7.1.2. a person's freedom to instruct a notary of that person's choice;
  - 7.1.3. the notary's ability to act in the best interests of the client;
  - 7.1.4. the good repute of the notary or of the notarial profession;
  - 7.1.5. the notary's proper standard of work; or
  - 7.1.6. the notary's duty of care to persons in all jurisdictions who may place legitimate reliance on the notarial acts undertaken by that notary.

## **8. Duty to act impartially in respect of notarial acts**

- 8.1. A notary must act impartially and in particular must not perform any notarial act which involves or may affect:
  - 8.1.1. the affairs of the notary, including matters in which the notary is personally interested jointly with another person;
  - 8.1.2. the affairs of a person who has appointed the notary to be an attorney and which concern a matter within the scope of the power of attorney granted to that notary;
  - 8.1.3. the affairs of a trust of which the notary is a trustee or of an estate where the notary is a personal representative of the deceased;

- 8.1.4. the affairs of a body corporate of whose board of directors or governing body the notary is a member;
  - 8.1.5. the affairs of a professional or business partnership of which the notary is a member or of a company in which the notary holds shares either exceeding five percent of the issued share capital or having a market value exceeding \$10,000.
- 8.2. For the avoidance of doubt nothing in this Code prevents a notary from certifying a copy of an official document as a true copy.

## **9. Employed Notaries**

- 9.1. A notary may act for a person who is also the client of the qualified legal practitioner or firm of qualified legal practitioners by which the notary is employed but the notary shall take all proper and reasonable steps to maintain independence from his or her employer. In particular, the notary shall ensure that his or her independence and integrity as a notary is fully recognised in writing in any contract of employment entered into by the notary with the employer.

## **10. Language**

- 10.1. A notary may upon request or in appropriate circumstances prepare a notarial act in a language other than the language generally spoken by that notary provided the notary has sufficient knowledge of the language in which the notarial act is written to reasonably understand the meaning of the notarial act.
- 10.2. A notary may authenticate, by means of a notarial act, a document drawn up in a language other than the language generally spoken by the notary, provided the notary is either satisfied as to its meaning or is satisfied that the applicant understands and accepts the contents of the document (in which case the notary should attach a certificate to this effect). If the applicant does not speak English, the notary may seek assistance from an independent translator or other appropriate person to satisfy this requirement.
- 10.3. A notary may not certify the accuracy of a translation that has been made by some other person unless the notary has knowledge of the language sufficient to satisfy the notary as to the accuracy of the translation but this does not prevent a notary from attesting a translator's affidavit or authenticating a verification of a translation made by some other person.

## **11. Publicity**

- 11.1. Subject to clause 11.2, a notary may advertise the notarial practice undertaken by that notary and seek to obtain directly or indirectly clients and business in any manner and through any medium whether informative or promotional provided that:
- 11.1.1. the principles are upheld;
  - 11.1.2. the client's freedom to instruct a notary of the client's choice is not unduly restricted;
  - 11.1.3. the notary's good reputation for integrity and professional standards of work is not damaged;
  - 11.1.4. the notary complies with any relevant code of advertising standards and practice currently in force;
- 11.2. Nothing in clause 11.1 shall be construed as authorising the use of the word "notary" or any word designating or indicating notarial services in any publicity for activities which are not of a notarial nature.

## 12. Introductions and referrals

- 12.1. When a notary enters into an arrangement with another person for the introduction of clients to the notary or by the notary to the other person, the notary must:
  - 12.1.1. ensure that the client is informed in writing of the arrangement and of any commission or other benefit the notary may be receiving or pay;
  - 12.1.2. obtain the client's written agreement as to the destination of the commission or account to the client for the commission;
  - 12.1.3. remain able to advise the client independently in accordance with these rules and continue to do so regardless of the interests of the notary.

## 13. Offering services other than as a notary

- 13.1. Where a notary acting on his or her own account or with any other person operates, actively participates in or controls any business, other than a notary's practice, the notary shall ensure:
  - 13.1.1. that the name of that business has no substantial element in common with the name of any practice of the notary;
  - 13.1.2. that the words "notary", "notaries," "attorney(s)" or "lawyer(s)" or any words designating or indicating a notarial or legal practice are not used in connection with the notary's involvement with that business;
  - 13.1.3. that any client referred by any practice of the notary to the business is informed in writing that, as a customer of that business, the client does not enjoy any protection attaching to the client of a notary, and that where that business shares premises or reception staff with any practice of the notary, every customer of the business is informed in writing that, as a customer of that business, the client does not enjoy the protection attaching to the client of a notary.
- 13.2. Clause 13.1 does not apply to the practice of a lawyer and any notary is permitted to advertise and use the words "barrister", "solicitor" and "notary public" in any advertising or promotion.

## 14. Fees

- 14.1. A notary may charge a professional fee for any notarial work undertaken by that notary, and the basis upon which that fee will be calculated or the fee to be charged for the work done, shall be made known where possible in advance to any new client.
- 14.2. Subject to clause 14.3, a notary shall not share or agree to share his or her professional fees with any person not entitled to act as a notary other than in accordance with clause 12.
- 14.3. A notary who also practises as a lawyer either in a professional partnership or as an employee may share professional fees received by the notary or the professional partnership provided the professional partnership or employer of the notary are also lawyers.

## 15. Name of a firm which includes notaries

- 15.1. The name of a firm which includes one or more notaries shall consist only of:
  - 15.1.1. the name of a firm of lawyers of which a notary is a partner or director; or
  - 15.1.2. a name approved in writing by the Society.

- 15.2. A notary using an internet domain name for the purpose of promoting his or her notarial practice shall comply with clause 15.1.

### **PART III: RECORDS**

#### **16. Duty to keep records**

- 16.1. A notary shall keep proper records of all notarial acts undertaken by that notary in accordance with this rule.
- 16.2. The records kept by a notary must clearly identify:
- 16.2.1. the date of the act;
  - 16.2.2. the person at whose request the act was performed;
  - 16.2.3. the person or persons, if any, intervening in the act and, in the case of a person who intervened in a representative capacity, the name of his or her principal;
  - 16.2.4. the method of identification of the party or parties intervening in the notarial act, and in the case of a party intervening in a representative capacity, any evidence produced to the notary of that party's entitlement to intervene; and
  - 16.2.5. the nature of the act.
- 16.3. In the case of a notarial act in the public form, the notary shall place an original of the act or a complete photographic copy of the same in a protocol which shall be preserved for seven years by the notary. For the avoidance of doubt, such preservation may be by means of a suitable digital or other electronic system providing for the storage of documents in an indelible and unalterable format.
- 16.4. Records of acts not in public form kept in accordance with clause 16.2 shall be preserved for a minimum period of seven years. For the avoidance of doubt, such preservation may be by means of a suitable digital or other electronic system providing for the storage of documents in an indelible and unalterable format.
- ~~16.5. A notary who preserves records by means of a digital or other electronic system in accordance with clauses 16.3 and 16.4 shall ensure that any username and password required for access to such digital or electronic system shall be made known to one of the partners of the notary or if the notary shall have no partners, then to the Society.~~
- 16.5. A notary who preserves records by means of a digital or other electronic system in accordance with clauses 16.3 and 16.4 shall ensure that any username and password required for access to such digital or electronic system shall be made known to the Society.
- 16.6. A copy of a notarial act or of the record of a notarial act preserved in accordance with clauses 16.3 and 16.4 shall, upon payment of a reasonable fee, be issued upon the application of any person or authority having a proper interest in the act unless prevented by order of a competent court.
- 16.7. Any question as to whether a person has a proper interest in an act for the purposes of clause ~~16.5~~16.6 shall be determined by the Society.

#### **17. Notaries ceasing to practise**

- 17.1. When a notary ceases to practise as a notary then the person having possession or custody of the records maintained by the notary pursuant to clause 16 shall arrange for such records to be transferred:

- 17.1.1. to another notary in practice appointed by the notary who has ceased to practise;
  - 17.1.2. to another notary in practice appointed, with the approval of the Society, by the person having possession or custody of the records; or
  - 17.1.3. to any archive designated for the purpose under regulations made by the Society.
- 17.2. The persons making the transfer referred to in clause 17.1 shall give written particulars to the Society of the date of transfer and the person or archive to which the records were transferred.
- 17.3. The provisions of clause 16 shall apply to a notary or archive to which the records of any notary are transferred pursuant to this rule in the same way and to the same degree as they apply to the notary.

## **PART IV: COMPLAINTS**

### **18. Complaints made to the Council**

- 18.1. The Council shall investigate all complaints made to it or/and any notarial misconduct made known to it concerning any notary or any act of any notary and the following shall apply:
- 18.1.1. All complaints received by the Council must be in writing;
  - 18.1.2. All complaints received by the Council shall be copied to the notary against whom the complaint is made. Council may redact any part or portion of the complaint where it deems necessary;
  - 18.1.3. The notary against whom the complaint is made shall within 21 days or such longer time as the Council may grant, respond to the Council regarding the complaint;
  - 18.1.4. Any response to the complaint received by the Council shall be given to the complainant who shall have a further right to respond in writing to the Council within 14 days or such longer period as the Council may grant;
  - 18.1.5. Any response received by the Council to the response provided by the notary shall be given to the notary against whom the complaint is made who shall have a period of 14 days or such longer period as the Council may grant to respond further;
  - 18.1.6. The Council shall then meet and consider the complaint together with the responses and shall make a determination based on the papers;
  - 18.1.7. The determination of the Council shall be one of the following:
    - (a) To take no further action.
    - (b) To dismiss the complaint.
    - (c) To uphold the complaint.
  - 18.1.8. In the event that the complaint is upheld, the Council shall seek from the complainant and the notary against whom the complaint is made input as to the possible outcomes of the complaint (as available under 18.1.9). The complainant and the notary against whom the complaint is made shall have a period of 14 days or such longer period as the Council may grant to give input to the Council;
  - 18.1.9. The Council after expiration of the time for receiving any information from the complainant and the notary against whom the complaint is made shall determine the outcome of the complaint which may be one or more of the following:

- (a) The Council may issue a letter of censure to the notary;
- (b) The Council may require the notary to refund part or all of the fees charged;
- (c) The Council may require the notary to undertake further work, either with or without fee, for the complainant;
- (d) The Council may require the notary to apologise to the complainant;
- (e) The Council may require the notary to undertake a further course of notarial education to be determined by the Council;
- (f) The Council may recommend to the Master that the warrant of the notary be suspended for a period of time or be withdrawn.

## **PART V: CONTINUING EDUCATION**

### **19. Continuing education**

- 19.1. Every notary shall participate in such programmes, courses or seminars and undertake such further continuing education as may be prescribed from time to time by the Council.
- 19.2. Every notary shall complete any further education prescribed by the Council to the satisfaction of the Council.
- 19.3. Any failure by a notary to complete further education in accordance with the Council's requirements shall be prima facie evidence of notarial misconduct.