

## **Notary within the Dutch Kingdom (Sint Maarten)**

Notaries occupy a special place in the world of legal professionals in the Dutch Kingdom, alongside attorneys-at-law (advocaten), bailiffs (deurwaarders) and tax advisors (belastingconsulenten). This is apparent first and foremost from the way in which a notary is appointed and performs his duties. Like an attorney, a notary is a legal professional with clients who pay for his advice and services, but like a judge, a notary is appointed by the Crown for life (in other words until the age of retirement at 65). The permanence of the appointment is designed to safeguard the independence which a notary needs to perform his duties.

This brings us to a second important feature: a notary's independence and, more importantly, his impartiality. Unlike an attorney-at-law or other legal advisor, a notary does not act for just one party. Instead, in the Dutch legal system, he is required to weigh up and balance the interests of all the parties to a legal transaction. A notary is, as it were, above the parties. For example, when immovable goods are conveyed a notary acts for both the seller and the buyer. He has a duty of secrecy in relation to his clients and has the right to withhold information in court, in the same way as an attorney-at-law or a doctor. In cases where a notary nonetheless acts as legal advisor to a particular party to a transaction, he should make this sufficiently clear to all concerned. Here too, however, the notary should not neglect the interests of third parties.

All notaries are law graduates. Not only are they experts in family law, succession law, corporate law and property law, but they must also stay abreast of certain aspects of tax legislation and case law in so far as they relate to these fields. If necessary, a Dutch notary may coordinate the activities of other legal professionals. However, a notary does not represent clients in court.

Apart from providing legal advice, a notary also records agreements, either because the law requires it or at the parties' request. The formal document drawn up by a notary, which is known as a notarial instrument, constitutes definite proof that the date and the parties' signature are correct. A notary is required to retain the original instrument and to issue the parties with certified copies. A specially-endorsed copy, known as the execution copy, provides conclusive evidence of title in the same way as a court judgment. It follows that the holder of a notarial instrument need not conduct legal proceedings to prove the authenticity of an instrument. By contrast, a deed drawn up by an English solicitor is not treated as an authentic document and cannot therefore be executed as such in the Dutch Kingdom.