



Prompt Legal Services

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Public Notary

What is a Notary?

An Australian Notary Public, Public Notary, or Notary, is a public officer, a practising lawyer, appointed for life by a State or Territory Supreme Court, and given statutory powers to witness documents, administer oaths, and perform other wide-ranging and useful administrative functions of a national and international nature.

A Notary Public not only takes oaths, signs and witnesses documents for use within Australia, but also performs similar functions in respect of international documents for use outside Australia.

Justices of the Peace (JPs) in Australia provide services similar to American notaries, but are not qualified to witness documents for use in foreign countries. Notaries have this exclusive right and are the only true international "JP's" practising in Australia.

Notaries Public affix their official seal (usually impressed onto a red or gold sticker) or inked stamp, onto documents immediately under, adjacent or as near as possible to their signatures.

All Notaries' seals and signatures are officially recorded in a data base held by the Department of Foreign Affairs and Trade (DFAT), an Australian government department authorised to issue Apostille or Authentication Certificates certifying that the signatures, seals or stamps of Notaries on Australian public documents are genuine.

Public Notaries also have their signatures, seals or stamps registered with their State or Territory Supreme Court to whom they are answerable to, and with their local Notary Society, if one exists in their State or Territory, and if a member.

What does a Notary Public actually do?

A Notary Public principally:

- Attests documents and certifies their due execution for use in Australia and overseas countries
- Prepares and certifies powers of attorney, wills, deeds, contracts and other legal documents, for use in Australia and overseas countries
- Administers oaths for Australian and international documents

- Witnesses signatures to affidavits, statutory declarations, powers of attorney, contracts, and other documents, for use in Australia and overseas countries
- Verifies documents for use in Australia and overseas countries
- Certifies copy documents for use in Australia and overseas countries
- Exemplifies official documents for use internationally
- Notes and protests bills of exchange
- Prepares ships' protests

A Public Notary must..

- Confirm the true identity of a signatory by careful examination of an identity document, such as a current Driver's Licence or Passport;
- Determine that a signatory does not suffer any legal incapacity, such as a congenital disability, physical or mental illness, physical injury, advanced age, or apparent intellectual deficiency;
- Ensure that a signatory fully understands the nature and effect of the contents of a document to be signed and witnessed;
- Ascertain that a signatory acting in an official representative capacity e.g. a secretary or director of an ASIC registered Company, has the Company's authority to sign on behalf of the Company; and
- Refuse notary services if a document constitutes a fraud or an unlawful act.

Do I need notarisation, apostille or authentication?

That depends on the foreign government you are dealing with. Advice can be provided by the country's embassy and/or consulate in Australia. You may also be referred to the organization requesting the document.

Notarisation

Notarization is the official fraud-deterrent process that assures the parties of a transaction that a document is authentic, and can be trusted. It is a three-part process, performed by a Notary Public, that includes

vetting, certifying and record-keeping. Notarizations are sometimes referred to as "notarial acts."

Above all, notarization is the assurance by a duly appointed and impartial Notary Public that a document is authentic, that its signature is genuine, and that its signer acted without duress or intimidation, and intended the terms of the document to be in full force and effect. The central value of notarization lies in the Notary's impartial screening of a signer for identity, willingness and awareness. This screening detects and deters document fraud, and helps protect the personal rights and property of private citizens from forgers, identity thieves and exploiters of the vulnerable. Every day the process of notarization prevents countless forged, coerced and incompetent signings that would otherwise occur.

Apostille

As a general rule, countries that are party to the *1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents* require an apostille on documents that qualify as Australian public documents. These countries include Italy, Croatia, Greece, the Netherlands, Israel, South Korea and many others. A full list of countries that are party to this convention can be found at the Hague Conference on Private International Law website. Most documents will need to be notarised before the apostille can be affixed by the Department of Foreign Affairs and Trade (DFAT).

Some countries will accept an apostille for certain types of documents, and many require an original government document to have been issued within 3 months of the apostille being affixed. This is especially the case in relation to birth and marriage certificates issued by the State Registry of Births, Deaths and Marriages (BDM). You must check the foreign requirements. Often, it is the original BDM certificate that requires an apostille, not a translation or copy of it.

From 1 July 2015, most Australian missions overseas are permitted to issue an Australian apostille on original public documents.

Online verification is available for apostilles issued by Australia on or after 14 December 2015. To verify an apostille online, visit the [verify an apostille page](#).

Authentication

Documents going to countries that are not party to the Hague Convention generally require an authentication. These countries include China, the UAE, Iraq, and many others. Some countries impose restrictions on how an authentication is affixed. For example, you may not be allowed to have an Australian notary public certify your foreign document as a true copy for the purposes of having an authentication affixed. It may be required to be signed by their Embassy in Australia after DFAT has stamped it and their Ministry of Foreign Affairs in the capital city. The requirements vary from country to country.

What documents can be legalised with an apostille or authentication?

- Original public documents issued by Australian government departments with an official signature or seal. All Australian public documents must have an official signature or seal in order to be certified with an authentication or apostille. Some government issued documents do not have signatures or seals on them. In this case, the document is usually not eligible for legalisation.
- Laminated or damaged documents will be refused. Replacements will need to be obtained from the issuing authority.
- If the Australian document is not government issued (such as a power of attorney or an article of association for a company) it must be certified and/or witnessed by an Australian notary public.
- Education documents presented to DFAT for an authentication or apostille must have been issued by an Australian accredited education authority. See the Australian Qualifications Framework website for more information on who can issue education documents in Australia. If your education document was issued by an institution in a foreign country, it will need to be authenticated or apostilled by that country, not by DFAT.
- If you intend to present a photocopy of your original document, it must first be certified and signed by an Australian notary public. A document certified by an Australian consular or diplomatic officer while it was outside of Australia can only be issued with an authentication not an apostille. Before paying for a certified copy to be legalised, first make sure the foreign authority will allow copies to be presented. Normally, documents accompanying foreign citizenship or visa applications must be original copies. For example, applying for dual citizenship for your children born to your Italian spouse, you will require a copy of the marriage certificate and birth certificates (all originals) issued by the Registry of Births Deaths and Marriages (in addition to other documents).

Details of DFAT

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