

Übersetzung durch Ute Reusch

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## **Federal Code for Notaries**

### **(Bundesnotarordnung – BNotO)**

Federal Code for Notaries in the consolidated version published in the Federal Law Gazette III, Index No. 303-1, as last amended by Article 3 of the Act of 20 December 2023 (Federal Law Gazette 2023 I No. 389)

The Code does not apply to the district of Karlsruhe Higher Regional Court pursuant to section 115 sentence 1; section 115 was repealed by Article 1 of the Act of 15 July 2009 (Federal Law Gazette I, p. 1798)

Notwithstanding Annex I Chapter III Subject Area A Division 1 No. 8 of the Unification Treaty (*Einigungsvertrag*) of 31 August 1990 read in conjunction with Article 1 of the Act of 23 September 1990 (Federal Law Gazette II, p. 885, 921), the Code entered into force in the five acceded *Länder* (Article 1 (1) of the Unification Treaty) with effect from 8 September 1998 pursuant to Article 13 (1) in accordance with the provisions of (2) to (11) of the Act of 31 August 1998 (Federal Law Gazette I, p. 2585) (Third Act to Amend the Federal Code for Notaries and Other Acts (*Drittes Gesetz zur Änderung der Bundesnotarordnung und anderer Gesetze*)); pursuant to Annex I Chapter III Subject Area A Division IV No. 1 Point b) of the Unification Treaty, it applies, with provisos, to the acceded part of the *Land* of Berlin.

#### **Part 1**

##### **Office of notary**

##### **Division 1**

##### **Appointment as notary**

##### **Section 1**

##### **Status and tasks of notary**

Notaries are independent holders of a public office who are appointed in the *Länder* to record legal acts ('notarial recording') and to perform other tasks in the field of the preventive administration of justice.

##### **Section 2**

##### **Profession of notary**

Unless otherwise provided, notaries are subject only to the provisions of this Code. They bear an official seal and use the official designation of '*Notarin*' or '*Notar*'. Their profession does not constitute a trade.

##### **Section 3**

##### **Full-time notaries; lawyers commissioned as notary**

(1) Notaries are appointed for life to exercise their office as their main occupation (full-time notaries).

(2) In those judicial districts in which the office of notary was exercised exclusively as a secondary occupation on 1 April 1961 only lawyers (*Rechtsanwälte*) will continue to be appointed as notaries to exercise the office concurrently with the profession of lawyer (lawyer commissioned as notary; *Anwaltsnotar*) for the duration of their membership of the bar association competent for that judicial district.

(3) (repealed)

#### **Section 4** **Need for appointment**

As many notaries are to be appointed as are required to meet the needs of the proper administration of justice. In particular, consideration is to be given to ensuring that the consumers of legal services are adequately supplied with notarial services and that an orderly age structure of the members of the profession is maintained.

#### **Section 4a** **Application**

(1) Notarial positions are to be advertised. This does not apply in the case of re-appointment after a notary has resigned from office under the terms of section 48b (2) sentence 1 or section 48c (3) sentence 1.

(2) Applications are to be submitted within the period specified in the advertisement or as generally made known by the *Land* department of justice.

(3) Whoever was prevented, through no fault of their own, from meeting the deadline, is, upon request, to be granted restoration of the status quo ante. Requests must be submitted within two weeks following removal of the obstacle. The facts supporting the request must be substantiated. The application must be filed subsequently within the deadline for submission.

#### **Section 5** **Aptitude to exercise notarial function**

(1) Only those having the personal and professional aptitude for the office may be appointed as notary.

(2) In particular, a person does not have personal aptitude if

1. they are guilty of conduct which makes them appear unworthy of properly exercising the notarial function,
2. they are, for health reasons, unable to properly exercise the notarial function not merely on a temporary basis or
3. they are in financial difficulties; this is presumed to be the case where insolvency proceedings have been opened against that person's assets or that person has been entered in the list of debtors (section 882b of the Code of Civil Procedure (*Zivilprozessordnung*)).

(3) Where necessary in order to be able to give a decision on the ground for refusal referred to in subsection (2) no. 2, the *Land* department of justice is to ask the person concerned to present a medical report detailing their state of health. The *Land* department of justice is to determine an appropriate period within which the medical report is to be presented and the doctor who is to issue the report. The report must be drawn up following a medical examination and, if this is deemed necessary by a public health officer, additionally following clinical observation of the person concerned. The costs of the medical report are to be borne by the person concerned. If the medical report is not submitted within the period set without sufficient ground, it is presumed that the ground for refusal as per subsection (2) no. 2 exists. The person concerned is to be informed of these consequences when the time limit is set.

(4) Whoever has reached the age of 60 years on the expiry of the deadline for applications for a notarial position cannot be appointed as notary for the first time.

(5) Professional aptitude presupposes that qualification to hold judicial office pursuant to the German Judiciary Act (*Deutsches Richtergesetz*) has been acquired. The Professional Qualifications Assessment Act (*Berufsqualifikationsfeststellungsgesetz*) does not apply.

### **Section 5a**

#### **Further requirements of full-time notaries**

Only those persons are, as a rule, to be appointed as full-time notary who, upon expiry of the deadline for applications, have already completed three years of service as trainee notary (*Notarassessor*) and are undertaking their service as trainee notary in the *Land* in which they are applying for appointment. The *Land* department of justice may determine that the three-year service as trainee notary only need be completed by the time the appointment is made.

### **Section 5b**

#### **Further requirements of lawyers commissioned as notary**

(1) Only those persons are, as a rule, to be appointed as lawyers commissioned as notary who, upon expiry of the deadline for applications, have

1. worked as a lawyer on a not insignificant scale for various clients for at least five years,
2. pursued the activity referred to in no. 1 for at least three years without interruption in the intended notarial jurisdiction,
3. passed the professional examination for notaries under section 7a and
4. each year taken part in at least 15 hours of notary-specific continuing training events run by the chambers of notaries or professional organisations as from that calendar year following the year in which they passed the professional examination for notaries.

(2) Interruptions on account of the events of daily life are not taken into consideration in the case of an activity as referred to in subsection (1) no. 1 and no. 2. Upon request, interruptions or limitations of activity by reason of pregnancy or looking after children or relatives needing nursing care (section 7 (3) of the Act on Caregiving Leave (*Pflegezeitgesetz*)) are to be credited against the activity referred to in subsection (1) no. 1 up to a maximum of one year in total. In the case of an activity as referred to in subsection (1) no. 2, the periods referred to in sentence 2 are not considered as an interruption if they last less than one year.

(3) It is, in particular, possible to derogate from the requirement under subsection (1) no. 2 if no application meets this requirement but an applicant has been performing the activity referred to in subsection (1) no. 1 without interruption either for at least two years in the intended notarial jurisdiction or for at least three years in the district of a local court which borders the district of the local court within the same *Land* in which the advertised notarial position is located. Subsection (2) applies accordingly.

(4) Further, appointment as a lawyer commissioned as notary presupposes sufficient familiarity with professional notarial practice. This requirement is generally fulfilled after passing the professional examination for notaries and undergoing 160 hours of subsequent practical training with a notary chosen by the chamber of notaries competent for the intended notarial jurisdiction. The practical training may be reduced by up to 80 hours where comparable experience has been gained by working as a deputy notary (*Notarvertretung*) or as an administrator for a notary (*Notariatsverwalter*) or on the basis of successfully participating in practical courses run by the chambers of notaries or professional organisations. Details of sentences 1 to 3 are regulated by the chamber of notaries in training regulations which require approval by the *Land* department of justice.

## **Section 6**

### **Selection amongst several suitable persons; authorisation to issue statutory instruments**

- (1) If several suitable applicants apply for an office, the sequence in which they are selected is based on their personal and professional aptitude, taking into account the state examination completed following the end of legal training and their performance when preparing for the profession of notary. Consideration is only to be given to those facts and circumstances which existed upon the expiry of the deadline for applications. The *Land* department of justice may determine a point in time which derogates from that specified in sentence 2 when appointing full-time notaries.
- (2) When appointing full-time notaries, appropriate consideration is to be given to the length of their service as trainee notary. The *Land* governments are authorised, by way of statutory instrument, to make determinations regarding the method for calculating the length of the service as trainee notary referred to in sentence 1. This encompasses the power to determine appropriate periods which may be credited against the period of service as trainee notary. The *Land* governments may delegate this authorisation to the *Land* departments of justice by way of statutory instrument.
- (3) When appointing lawyers commissioned as notary, professional aptitude is assessed on the basis of a points system. The result of the professional examination for notaries accounts for 60 per cent, and the result of the state examination taken following the end of legal training accounts for 40 per cent of the point score, unless, in an individual case and after having heard the chamber of notaries, consideration is, by way of exception, to be given to special circumstances in the case of anyone who is or was a notary and these take precedence over the applicant's professional aptitude. Where examinees achieve the same point score, account is, ordinarily, to be taken of the result of the professional examination for notaries.

## **Section 6a**

### **Refusal and stay of appointment**

- (1) Appointment as a notary is to be refused where neither proof of having taken out professional indemnity insurance (section 19a) is furnished, nor a provisional cover note is supplied.
- (2) The appointment may be stayed if proceedings on suspicion of a criminal offence are pending against the person whose appointment is planned in which the alleged crime raises the expectation that a conviction will be made which would result in refusal of the appointment.

## **Section 7**

### **Service as trainee notary; authorisation to issue statutory instruments**

- (1) Positions intended for those undertaking their service as trainee notary are to be advertised; section 4a (2) and (3) applies accordingly. In derogation therefrom, the *Land* department of justice may keep an ongoing list in which the names of those persons wishing to apply for inclusion to serve as trainee notary may be entered for a specified period of time. The fact that such lists are kept is to be generally made known.
- (2) If several suitable persons apply to serve as trainee notary, they are selected on the basis of personal and professional aptitude, taking particular account of the state examination completed following the end of legal training. Section 6 (1) sentence 2 and 3 applies accordingly.
- (3) Trainee notaries are appointed by the *Land* department of justice after it has heard the chamber of notaries. It is for the president of the chamber of notaries to assign trainee notaries to a notary. The president obliges the trainee notary by means of a handshake to conscientiously fulfil his or her duties.
- (4) Trainee notaries are in a public-law employment relationship with the state whilst serving as trainee notaries. Excepting section 19a, they have the same official duties as a notary. As from the time of their assignment and for the duration of their service as trainee notaries they

receive remuneration from the chamber of notaries which is to be comparable to that of a judge on probation. The chamber of notaries enacts guidelines in this regard and determines either generally or in the individual case whether and in what amount the notary to whom a trainee notary has been assigned is obliged to reimburse the remuneration.

(5) Trainee notaries are to be employed by the notary in a manner which corresponds to the purpose of the service as trainee notary. The *Land* government or the agency determined by it by way of a statutory instrument regulates, by way of a statutory instrument, further details concerning the training of trainee notaries.

(6) The service as trainee notary ends

1. upon the trainee notary being appointed as notary,
2. upon the trainee notary being discharged from service.

(7) Trainee notaries are to be discharged from service upon their request therefor; section 48 sentence 2 and 3 applies accordingly. They may be discharged if they

1. prove unsuitable for appointment as notary,
2. do not commence the service as trainee notary without sufficient reason within a period to be determined by the *Land* department of justice, which should not exceed two months,
3. do not apply for a notarial position offered to them by the *Land* department of justice without sufficient reason after serving three years as trainee notary and that post was previously advertised and could not be filled on account of a lack of suitable applications.

### Section 7a

#### **Professional examination for notaries; authorisation to issue statutory instruments**

(1) Whoever has been admitted to the legal profession for three years and is qualified to hold judicial office pursuant to the German Judiciary Act is admitted to the professional examination for notaries upon application.

(2) The professional examination for notaries serves to provide proof that and to what degree a lawyer is professionally suited to exercise the notarial function in the capacity as lawyer commissioned as notary. The examination comprises a written and an oral part.

(3) The professional examination for notaries serves to identify the best amongst the examinees. The uniformity of examination requirements and performance assessment is to be guaranteed. The examination may be held at various locations.

(4) The topics of the written and of the oral examination cover the entire spectrum of official functions of a notary. The Federal Ministry of Justice and Consumer Protection regulates the areas covered in the examination by way of a statutory instrument requiring the approval of the Bundesrat.

(5) Sections 1 and 2 of the Ordinance on a Mark and Point Scale for the First and Second State Examination in Law (*Verordnung über eine Noten- und Punkteskala für die erste und zweite juristische Staatsprüfung*) of 3 December 1981 (Federal Law Gazette I, p. 1243) apply accordingly to the marks to be awarded by the individual examiners and the composition of the final mark.

(6) The written examination accounts for 75 per cent, the oral examination for 25 per cent of the overall result of the professional examination for notaries. Whoever achieves an overall mark of at least 4.00 points is deemed to have passed the professional examination for notaries.

(7) Whoever does not pass the examination or has been deemed not to have passed the examination may repeat it once. An examinee who has passed the examination may repeat the examination once with the aim of achieving a better score.

## **Section 7b**

### **Written examination**

- (1) The written examination comprises four five-hour invigilated examinations. It serves to determine whether the examinee has acquired the specialist knowledge needed to be able to work as a notary and whether he or she is able to provide, within a limited space of time and using the prescribed aids, legally sound and practical solutions to tasks drawn from notarial practice. The written examination may be conducted electronically.
- (2) Each invigilated examination is marked successively by two examiners. The names of the examinees may not be made known to the examiners before marking of the invigilated examinations has been completed. At least one lawyer commissioned as notary is, as a rule, to be involved in marking each individual task set. If the marks awarded deviate by no more than three points, the average is to be taken. If the marks differ by a larger number of points and the examiners cannot reach agreement or approximate the marks so that they deviate only by up to three points, a third examiner decides; that examiner may decide to take one of the two marks or to award a mark which lies between the two other marks.
- (3) The marks awarded for the invigilated examinations are made known to examinees when they are invited to the oral examination. Where more than one invigilated examination is awarded less than 4.00 points or the overall average of all the invigilated examinations is less than 3.50 points, the examinee is not permitted to take the oral examination and has not passed the professional examination for notaries.

## **Section 7c**

### **Oral examination**

- (1) The oral examination comprises a presentation on a problem specific to the office of notary and a group interview which is, as a rule, to cover different subject areas. The group interview is, as a rule, to last around 45 minutes per examinee. No more than five examinees are, as a rule, to be examined at once. Besides evidence of their knowledge, examinees are in particular also to provide evidence in the oral examination that they are able to fulfil a notary's duty of examination and instruction in a manner appropriate to the subject matter and the situation.
- (2) The oral examination is conducted by a board of examiners comprising three members. At least one member must be proposed by a *Land* department of justice and at least one member must be a lawyer commissioned as notary. The Examination Office assigns one member of the board of examiners to act as chair. The members of the board of examiners must be in attendance throughout the entire examination.
- (3) Representatives of the chambers of notaries, of the Federal Chamber of Notaries, of the Examination Office, of the Federal Ministry of Justice and Consumer Protection and of the *Land* departments of justice may be present during oral examinations. The Examination Office may admit persons who have been admitted to the professional examination for notaries to observe an examination. Only the members of the board of examiners take part in the deliberations.
- (4) Following the oral examination the examiners mark the presentation and the group interview in accordance with section 7a (5). If the marks awarded differ, the average is taken. The board of examiners then announces the marks to the examinee. A more detailed explanation of the marks awarded may only be requested right away and is only to be given orally.

## **Section 7d**

### **Notification; certificate; appeal**

- (1) Notification of the result of the professional examination for notaries is to be served on the examinee. A certificate is issued where the examinee passes the professional examination for notaries, indicating the overall mark plus a designation and a point score. Whoever repeats the professional examination for notaries is issued with a certificate only upon achieving a higher mark.
- (2) The head of the Examination Office decides on an objection.



(3) (repealed)

#### **Section 7e**

##### **Withdrawal; missing examination**

(1) If, after being admitted to the examination, an examinee withdraws without sufficient excuse, does not hand in an invigilated examination or does not do so on time, or does not appear for the oral examination or does not appear on time, he or she is deemed to have failed the examination.

(2) Whoever proves that they were prevented, through no fault of their own, from taking one or more of the invigilated examinations or from handing them in on time may retake the invigilated examination in question; the already completed parts of the examination remain unaffected. Whoever proves that they missed the entire or part of the oral examination through no fault of their own may retake the oral examination.

#### **Section 7f**

##### **Attempts to influence results; breach of regulations**

(1) Where an examinee attempts to influence the result of the professional examination for notaries by using aids which are not permitted, by drawing on the prohibited assistance of third parties or using other means of deception, that part of the examination is to be awarded zero points. In the event of a serious or repeat attempt at deception, he or she is deemed to have failed the professional examination for notaries as a whole.

(2) Where a serious attempt at deceit becomes known after the overall mark has been announced, the examinee may be deemed to have failed the professional examination for notaries in question.

(3) An examinee who commits a significant breach of the examination regulations may be barred from continuing to take the invigilated examination or the oral examination. Where an examinee is barred from continuing to take an invigilated examination, that examination is deemed to have been awarded zero points. In the event of an examinee repeatedly being barred from taking an invigilated examination or being barred from the oral examination, he or she is deemed to have failed the professional examination for notaries.

#### **Section 7g**

##### **Examination Office; authorisation to issue statutory instruments**

(1) The Examination Office for the Professional Examination for Notaries at the Federal Chamber of Notaries (Examination Office) is responsible for administering the examination.

(2) The Examination Office decides on whether an examinee is to be admitted to the examination, nominates the examiners, including the additional examiner (section 7b (2) sentence 5) and the examination committees, sets the examination dates, invites examinees, determines the examination result, issues the examination certificate and takes decisions on the consequences of a breach of the examination regulations and on objections pursuant to section 7d (2) sentence 1. The Federal Ministry of Justice and Consumer Protection regulates further details by way of a statutory instrument requiring the approval of the Bundesrat.

(3) The person who heads the Examination Office (head) represents the Office in administrative proceedings and in court proceedings in connection with the professional examination for notaries. The head and the head's permanent deputy must be qualified to hold judicial office. They are appointed for a five-year term of office by the Federal Ministry of Justice and Consumer Protection in agreement with those *Land* departments of justice in whose jurisdiction lawyers commissioned as notary are appointed and after the Federal Chamber of Notaries has been heard. Their re-appointment is possible. The head and the head's permanent deputy may act as examiners.

(4) An Examination Committee is to be established at the Examination Office. It sets the questions for the written examination, decides which aids are permitted in the examination and makes proposals for questions to be set in the oral examination. The members of the Committee must hold one of the qualifications listed in subsection (6) sentence 1. They are

appointed for a five-year term of office by the head of the Examination Office in agreement with the Administrative Board. Their re-appointment is possible. The members of the Examination Committee act in an honorary capacity. However, they receive appropriate compensation for their activities and reimbursement of their necessary expenses.

(5) An Administrative Board is to be established at the Examination Office. It is responsible for supervising the head of the Examination Office and the Examination Committee. The Administrative Board comprises one member nominated by the Federal Ministry of Justice and Consumer Protection, one member nominated by the Federal Chamber of Notaries and three members nominated by mutual agreement by those *Land* departments of justice in whose jurisdiction lawyers commissioned as notary are appointed. Subsection (4) sentence 6 and 7 applies accordingly to the members of the Administrative Board.

(6) The following are appointed as examiners by the Examination Office for a five-year term of office:

1. judges and public officials qualified to hold judicial office, even if they have already reached retirement age, upon the proposal of the Federal Ministry of Justice and Consumer Protection or a *Land* department of justice in whose jurisdiction lawyers commissioned as notary are appointed,
2. notaries and retired notaries upon the proposal of a chamber of notaries and
3. other persons who have the same qualifications as those referred to in nos. 1 and 2, in agreement with the Federal Ministry of Justice and Consumer Protection and those *Land* departments of justice in whose jurisdiction lawyers commissioned as notary are appointed.

Re-appointment is possible. The appointment may be revoked for important reasons. Examiners retire upon reaching the age of 70; this is without prejudice to their involvement in opposition proceedings.

(7) Examiners are independent in taking decisions on examinations and not bound by instructions. In all other respects, they are subject in their capacity as examiner to the supervision of the Examination Office. Subsection (4) sentence 6 and 7 applies accordingly to examiners.

#### **Section 7h Fees**

(1) Fees are to be paid to the Federal Chamber of Notaries for the examination and for unsuccessful opposition proceedings. An examinee is not admitted to the examination until the Federal Chamber of Notaries has received the examination fees. If the examinee withdraws before commencing the examination, three quarters of the fee is reimbursed. If the examinee withdraws up to the end of the period for marking the last invigilated examination, half of the fee is to be reimbursed. No fees are reimbursed in the case referred to in section 7f.

(2) The Federal Chamber of Notaries determines, by way of by-laws which require approval by the Federal Ministry of Justice and Consumer Protection, the amount of the fees within the meaning of subsection (1), details concerning the levying of the fees, the remuneration paid to the head and employees of the Examination Office and the remuneration and reimbursement of expenses of the members of the Examination Committee, the members of the Administrative Board and the examiners.

#### **Section 7i Authorisation to issue statutory instruments concerning professional examination for notaries**

The Federal Ministry of Justice and Consumer Protection regulates, by way of a statutory instrument requiring the approval of the Bundesrat, further details concerning the organisation and the course of business of the Examination Office, the selection and



appointment of the examiners, the examination procedure and the Administrative Board's decision-making procedure.

## **Section 8**

### **Secondary employment**

(1) Notaries may not simultaneously hold a salaried office. In an individual case, after having heard the chamber of notaries, the *Land* department of justice may at any time permit revocable exceptions; in such cases the notary may not personally exercise the office of notary.

(2) Notaries may not exercise another profession; section 3 (2) remains unaffected. Lawyers commissioned as notary may simultaneously exercise the profession of patent attorney, tax adviser (*Steuerberater*), auditor or certified accountant.

(3) Notaries require the permission of the supervisory authority to

1. take on paid secondary employment, in particular a commercial activity,
2. join the board, supervisory board, administrative board or other constituent body of a for-profit enterprise, co-operative or an economic enterprise operated in another legal form.

Such permission is to be refused if the activity referred to in sentence 1 is not compatible with the public office of notary or if it might diminish the confidence placed in the notary's independence or impartiality. The chamber of notaries is to be heard before taking a decision on granting permission. Permission may be linked to ancillary provisions.

(4) No permission is required in order to take on the office of executor, insolvency administrator, arbitrator or guardian or a similar post by order of a public authority, and academic, artistic or lecturing activities.

## **Section 9**

### **Association for purpose of joint practice; authorisation to issue statutory instruments**

(1) Notaries may form joint practices or share business premises only with notaries appointed at the same location of office. The *Land* governments or agencies determined by them by way of a statutory instrument are authorised, in order to meet the requirements of the proper administration of justice, in particular as regards local needs and customs, to determine by way of a statutory instrument that an association for the purpose of joint practice or the sharing of business premises in accordance with sentence 1

1. is subject to the permission of the supervisory authority, which is first to hear the chamber of notaries, and may be linked to ancillary provisions, with the exception of a revocation proviso, and
2. is subject to certain requirements as to the establishment, conduct, continuation and termination of the joint practice or sharing of business premises, in particular in relation to the maximum number of professionals involved.

(2) Beyond that which is set out in subsection (1), lawyers commissioned as notary may form joint practices or share business premises only with each other and with other members of a bar association, with patent attorneys, tax advisers, tax agents (*Steuerbevollmächtigte*), auditors and chartered accountants. Other possibilities of forming associations resulting from the laws governing these professional groups are ruled out. Joint practices as referred to in sentence 1 may not pertain to notarial activities and are to be kept separate from any joint practice as referred to in sentence 1.

(3) A joint practice and the sharing of business premises is permissible only to the extent that the notary's personal and autonomous exercise of the office, independence and impartiality is not affected.

## **Section 10**

### **Location of office**

(1) Notaries are assigned to a specific place as their location of office. In towns and cities with a population of more than 100,000, notaries may be assigned to a specific municipal district or local court district as their location of office. The location of office may be moved with the consent of the notary after the chamber of notaries has been heard and consideration has been given to the interests of the proper administration of justice. The consent of the notary is not required when assigning another location of office on the ground of a judgment handed down by a disciplinary court.

(2) Notaries are required to maintain an office at their location of office. They are to choose their dwelling so that it does not affect the proper exercise of their official functions; the supervisory authority may instruct a notary to choose a dwelling within a specified distance of his or her location of office if this is necessary in the interests of the administration of justice. In the case of lawyers commissioned as notary, their office and a law office as referred to in section 27 (1) or (2) of the Federal Code for Lawyers (*Bundesrechtsanwaltsordnung*) must be one and the same.

(3) Notaries are, as a rule, to keep their office open during normal business hours.

(4) Notaries may be required to maintain several offices; they are not authorised to do so without the permission of the supervisory authority. The same applies when it comes to holding office hours elsewhere. Permission may be linked to ancillary provisions. The chamber of notaries is to be heard before issuing or revoking permission.

#### **Section 10a Jurisdiction**

(1) A notary's jurisdiction encompasses the district of that local court in which that notary has his or her location of office. Depending on the requirements of the proper administration of justice, the *Land* department of justice may determine the boundaries of notarial jurisdiction differently either in general or in an individual case when assigning the location of office and may amend such determinations, in particular in order to adapt them to changes made to judicial districts.

(2) Notaries are, as a rule, to perform their notarial acts (sections 20 to 22) only within their own jurisdiction, unless the specific justified interests of the consumers of legal services require the performance of such acts beyond the bounds of that jurisdiction.

(3) Notarial acts performed via video communication in accordance with sections 16a to 16e and 40a of the Notarial Recording Act are only deemed to have been performed within the notary's jurisdiction if one of the following is located there:

1. the seat of the legal person or partnership with legal capacity concerned or the main establishment or place of residence of the sole trader concerned,
2. in the case of a legal person or partnership with legal capacity with seat abroad or a sole trader with his or her main establishment or place of residence abroad, the seat or business address of the branch office concerned,
3. the place of residence or seat of a representative of the representative body of a legal person or of a general partner of a partnership with legal capacity concerned or
4. the place of residence or seat of a shareholder of a legal person or of a partner of a partnership with legal capacity concerned, insofar as that person's capacity as shareholder or partner is apparent from the Commercial Register or from a comparable register.

Subsection (1) sentence 2 applies accordingly.

(4) Notaries must notify the supervisory authority or the chamber of notaries of which they are members if the supervisory authority so determines, without delay and stating reasons, of any notarial acts performed beyond the bounds of their notarial jurisdiction.

#### **Section 11 Official district**

- (1) A notary's official district is the higher regional court district in which that notary has his or her location of office.
- (2) A notary may perform notarial acts outside of his or her official district only where there is danger in delay or the supervisory authority has given permission therefor.
- (3) Applying the conditions of section 10a (3) sentence 1 accordingly, notarial acts performed via video communication in accordance with sections 16a to 16e and 40a of the Notarial Recording Act are deemed to have been performed in the notary's official district.
- (4) A breach does not affect the validity of the notarial act, even if the notary performs the notarial act outside of that *Land* in which he or she has been appointed as notary.

### **Section 11a**

#### **Cooperation with notary appointed abroad**

Notaries are authorised to assist a notary who has been appointed abroad with his or her official functions upon that notary's request and may go abroad for that purpose insofar as this is not precluded under the legal provisions applicable in the state concerned. The German notary must comply with the official duties incumbent upon him or her under German law. A notary who has been appointed abroad may provide collegial assistance in the area of application of this Code only upon the request of a German notary; sentence 1 applies accordingly. The foreign notary must comply with the official duties incumbent upon a German notary.

### **Section 12**

#### **Certificate of appointment**

- (1) Notaries are appointed by the *Land* department of justice, after it has heard the chamber of notaries, upon delivery of a certificate of appointment. The certificate is, as a rule, to state the notary's official district and location of office and the duration of the appointment (section 3 (1) and (2)).
- (2) In derogation from section 44 of the Administrative Procedure Act (*Verwaltungsverfahrensgesetz*), an appointment is only null and void if no certificate of appointment was issued and the files also contain no reference to the fact that an appointment should be made. If the appointment is not null and void but the chamber of notaries was not heard or no certificate of appointment was issued, this is to be immediately made up for.

### **Section 13**

#### **Administration of oath**

- (1) After delivery of the certificate of appointment the notary is required to swear the following oath:

‘I do swear before God the Omnipotent and Omniscient that I will uphold the constitutional order and conscientiously and impartially perform the official duties of a notary. So help me God.’

Where the oath is sworn by a female notary, the male form of the noun is replaced by the female form of the noun in German.

- (2) Where members of a religious community are permitted by law to use a form of affirmation other than the words ‘I do swear’, a notary who is a member of that religious community may use that form of affirmation. The oath may also be taken without the religious affirmation.
- (3) Notaries swear the oath before the president of the regional court in whose district they have their location of office. They are, as a rule, not to perform any official acts before taking the oath.
- (4) If the notary has already been sworn in as a notary, then it is generally sufficient for his or her attention to be drawn to the previous oath.

### **Division 2**

#### **Exercise of office**

## **Section 14**

### **General professional duties**

- (1) Notaries are to execute their office true to their oath. They are not to represent any party but to provide an independent and impartial service to the parties involved.
- (2) Notaries are to refuse to carry out their official functions if these are incompatible with their official duties, in particular if they are asked to participate in activities which recognisably pursue unlawful or dishonest purposes.
- (3) Notaries are to show themselves worthy of the respect and confidence shown in the notarial function by means of their conduct both when exercising and when not exercising that function. They are to avoid any conduct which creates the appearance of being in breach of the official duties incumbent upon them by law, in particular their appearance of independence or impartiality.
- (4) Notwithstanding the agency activities assigned to them by law, notaries are prohibited from arranging loans and property transactions, from being involved in any manner in arranging notarial business or taking on a surety or another guarantee in connection with an official act. They are to ensure that those persons in their employ do not engage in such business.
- (5) Notaries may not acquire any stake in a company which is incompatible with their office. In particular, they are prohibited from holding a stake in a company which engages in an activity within the meaning of section 34c (1) of the Trade Regulation Code (*Gewerbeordnung*) if they are to directly or indirectly exercise a controlling influence alone or together with other persons with whom they have formed a joint practice pursuant to section 9 or with whom they share business premises.
- (6) Notaries must undertake continuing training to the extent necessary in respect of their notarial functions. This includes the obligation to inform themselves about changes to the law.

## **Section 15**

### **Refusal to perform functions**

- (1) Notaries may not refuse to perform notarial acts without sufficient reason. They are not obliged to record documents written in a language other than German.
- (2) A complaint (*Beschwerde*) may be brought against a notary's refusal to perform notarial acts or other functions. It is for the civil chamber of the regional court in whose district the notary has his or her location of office to hear the complaint. The provisions of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*) apply to the proceedings.
- (3) (repealed)

## **Section 16**

### **Ban on involvement as notary; recusal**

- (1) Section 3 of the Notarial Recording Act (*Beurkundungsgesetz*) applies accordingly in respect of those official functions of a notary which do not constitute notarial recording under that Act.
- (2) Notaries may recuse themselves from performing their duties on the ground of bias.

## **Section 17**

### **Fees**

- (1) Notaries are obliged to charge the fees prescribed by law for their activities. Unless statutory provisions provide for the waiving, reduction or non-collection of fees owing to improper handling of a matter, it is permissible to waive or reduce the fees only insofar as the levying of fees would be unreasonable on account of the extraordinary circumstances of the individual case and the chamber of notaries has consented to the waiving or reduction of fees. Within the areas of responsibility of the Notaries' Fund and of the Notaries' Fund for the Five Eastern Länder, these take the place of the chambers of notaries. The promising and

granting of advantages in connection with an official function and any sharing of the fees with third parties is not permissible.

(2) In the case of parties qualifying for legal aid under the provisions of the Code of Civil Procedure, notaries are, in analogous application of the provisions of the Code of Civil Procedure, to provisionally perform their notarial acts free of charge or against payment of the fees in monthly instalments.

## **Section 18**

### **Obligation of confidentiality**

(1) Notaries are bound to maintain confidentiality. This obligation applies to everything which becomes known to them in the exercise of their office. It does not apply to facts which are obvious or which, by dint of their importance, do not necessitate confidentiality.

(2) The obligation of confidentiality does not apply where the parties involved grant an exemption thereto; if a party is deceased or no statement can be obtained from a party or obtaining the statement entails disproportionate difficulties, the supervisory authority may grant the exemption instead.

(3) Where, in an individual case, there are doubts as to whether the obligation of confidentiality applies, the notary may seek a decision from the supervisory authority. If the supervisory authority negates this obligation, no claims can be derived against a notary who has spoken about a matter.

(4) The obligation of confidentiality continues to apply even after the expiry of office.

## **Section 18a**

### **Access to content of notarial instruments and registers for research purposes**

(1) Persons engaged in historical or other scientific research are to be granted access to the content of notarial instruments and registers in accordance with the following provisions insofar as

1. this is necessary to be able to conduct a scientific research project and
2. more than 70 years have elapsed since the date of the notarial recording or since the date of entry in the register.

(2) An application for access is to be made in text form with the agency holding the instruments or registers or with the competent *Land* department of justice. The application must describe in as much detail as possible the research project and the instruments and registers to whose content access is being requested. It must also state why access is necessary in order to be able to conduct the research project. Where the application is being made for non-anonymised access under section 18b (1) no. 1, it must also set out why the purpose of the research can only be achieved with the help of content subject to the obligation of confidentiality. Where the application for access is made by a legal person, the name of the natural person leading the research project must be included.

(3) The decision on an application as referred to in subsection (2) is taken by the competent *Land* department of justice after it has heard the agency holding the instruments or registers. The application may be refused if the determination and examination of the notarial instruments and registers would involve unreasonable effort.

## **Section 18b**

### **Form of access for research purposes**

(1) The *Land* department of justice is to grant anonymised access to the content of notarial instruments and registers for research purposes, unless

1. the purpose of the research can only be achieved with the help of content which is subject to the obligation of confidentiality under section 18 or
2. the anonymisation process would involve unreasonable effort.

(2) If, under subsection (1), non-anonymised access is a possibility, the *Land* department of justice may grant such access only if the research interest overrides the interest in secrecy of the natural or legal persons affected by the content of the instrument or register. Where there are indications that the interest of the persons concerned in secrecy could override the research interest, the persons concerned are to be given the opportunity to comment before non-anonymised access is granted. If such a comment cannot be obtained, or obtaining it entails disproportionate difficulties, a decision may also be taken without such comments.

(3) The agency holding the instruments or registers is to offer the access granted by the *Land* department of justice by providing information, insofar as the purpose of the research can be achieved thereby and providing the information does not involve disproportionate effort. Otherwise, it is to enable inspection of the instruments and registers and, upon request, to make copies available. It is not permissible to surrender the instruments and registers.

(4) Non-anonymised access is only offered to researchers who are conducting a research project in the capacity as public official or specially authorised public servants, or who have first been bound to secrecy in accordance with section 1 (2), (3) and (4) no. 2 of the Act on the Formal Assignment of Responsibilities to Persons Other than Civil Servants (*Verpflichtungsgesetz*).

### **Section 18c**

#### **Protection of content during access for research purposes**

(1) Researchers are required to protect against unauthorised cognisance the content of notarial instruments and registers subject to confidentiality under section 18 to which they have been given access for research purposes. They are to oblige, in writing, the persons involved in the research project who are to be given access to such content to maintain confidentiality and to draw their attention to the fact that they are criminally liable for any breach of this obligation. Content within the meaning of sentence 1 is to be destroyed as soon as it is no longer required for the research project.

(2) Content within the meaning of subsection (1) sentence 1 may only be used for the research project for which the access was granted. Its use for other research projects requires the prior consent of the *Land* department of justice. Sections 18a (1) and 18b (1) and (2) sentence 2 and 3 apply accordingly to the giving of that consent.

(3) Researchers may publish content within the meaning of subsection (1) sentence 1 only if this is essential in order to be able to present the research results. Publication requires the prior consent of the *Land* department of justice. Section 18b (2) sentence 2 and 3 applies accordingly.

### **Section 18d**

#### **Costs of access for research purposes**

(1) Fees as set out in the Fee Schedule in Annex 1 are levied for access to the content of notarial instruments and registers for research purposes. Where the official act giving rise to specified costs was carried out by a notary or a chamber of notaries, the provisions of federal or *Land* legislation on the basis of which costs are waived for objective or personal reasons do not apply. In all other respects, the provisions of the Judicial Administration Costs Act (*Justizverwaltungskostengesetz*), with the exception of section 4 (2) sentence 1, apply accordingly.

(2) The costs are recovered by the *Land* department of justice. If the official act giving rise to specified costs was carried out by a notary or a chamber of notaries, the *Land* department of justice passes the costs collected therefor to the agency carrying out the act. If the agency carrying out the official act is required to charge turnover tax on these costs, this is also to be recovered.

### **Section 19**

#### **Breach of official duty**



(1) Where a notary, through intent or negligence, breaches the official duty incumbent upon him or her vis-à-vis other persons, that notary is required to compensate those persons for the damage arising therefrom. Where the notary acted out of negligence, that notary may be held liable only if the injured parties are unable to secure compensation in another manner; however, that does not apply to official functions of the types referred to in sections 23 and 24 in the relationship between notaries and their clients. In all other respects, the provisions of the Civil Code (*Bürgerliches Gesetzbuch*) concerning the liability to pay damages in the event of a breach of official duty by a public official apply accordingly. The state is not liable in lieu of the notary.

(2) Where a trainee notary commits a breach of official duty in the course of independently performing one of the types of business referred to in sections 23 and 24, then, applying subsection (1) accordingly, that trainee notary is liable. If the notary left the trainee notary to perform the business independently, the notary is jointly and severally liable in addition to the trainee; in the relationship between the notary and the trainee notary the trainee alone is liable. The employment relationship between the trainee and the state (section 7 (3)) does not establish any liability on the part of the state. If the trainee notary was acting as the notary's deputy, section 46 applies as regards liability.

(3) The regional courts alone are competent as regards claims for damages under subsections (1) and (2), regardless of the value in dispute.

### **Section 19a**

#### **Professional indemnity insurance**

(1) Notaries are obliged to maintain professional indemnity insurance to cover the liability risks for financial losses resulting from their professional activity as notary and for the activities of persons for whom they are liable. The insurance must be taken out with an insurance company which is authorised to do business in Germany at the general conditions of insurance submitted in accordance with the provisions of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*). The insurance must cover all the risks of liability to be insured pursuant to sentence 1 and each individual breach of official duty which may give rise to liability claims against the notary.

(2) The insurance cover may exclude liability for

1. claims for compensation on the ground of an intentional breach of official duty,
2. claims for compensation resulting from activities pursued in connection with the provision of advice about non-European law, unless the breach of official duty consists in the possibility of applicability of that law not having been recognised,
3. claims for compensation based on misappropriation by members of the notary's staff, unless the notary is liable on account of a negligent breach of his or her official duty to supervise staff.

Where, following a breach of official duty, the only contentious issue is whether the ground for the exclusion under no. 1 exists, and the professional indemnity insurer therefore refuses to regulate the matter, the insurer must nevertheless pay the minimum insurance cover up to the amount applicable to the insurer covering the damages for intentional acts. If the professional indemnity insurer satisfies the party entitled to compensation, the entitled party's claim against the notary, the chamber of notaries, the insurer pursuant to section 67 (3) no. 3 or another party entitled to compensation passes to it. The professional indemnity insurer may also demand compensation for its expenses from persons for whose obligations it is liable pursuant to sentence 2 in the same way as from a client.

(3) The minimum insurance cover is 500,000 euros for each insured event. The benefits paid by the insurer for all losses incurred in one insurance year may be limited to double the amount of the minimum insurance cover. The insurance contract must oblige the insured party to notify the *Land* department of justice and the chamber of notaries without delay of the start and the end or termination of the insurance contract and of any change to the

insurance contract which affects the prescribed insurance cover. It may be agreed in the insurance contract that all breaches of official duty in the performance of a single item of official business based either on the conduct of the notary or of an assistant whom that notary enlists may be regarded as one insured event.

(4) It is permissible to agree an excess of no more than 1 per cent of the minimum insurance cover.

(5) The competent agency within the meaning of section 117 (2) of the Insurance Contract Act (*Versicherungsvertragsgesetz*) is the *Land* department of justice.

(6) Upon the application of third parties and in order that they may assert claims for compensation, the *Land* department of justice or the chamber of notaries of which the notary is a member supplies the name and address of the notary's professional indemnity insurance and the insurance number, unless the notary has an overriding interest worth protecting in the information not being supplied; this also applies where the notarial function has expired.

(7) (repealed)

### **Division 3 Notarial functions**

#### **Section 20 Notarial recording and authentication**

(1) Notaries are responsible for the notarial recording of all manner of documents and for certifying signatures, qualified electronic signatures, manual signs and copies. Their tasks include, in particular, the recording of assembly decisions, the conduct of lotteries and draws, the making of inventories of property, estate inventories and schedules of estate assets, mediating in disputes regarding an estate and common property, including the issuing of certificates pursuant to sections 36 and 37 of the Land Registry Code (*Grundbuchordnung*), the creation and approval of official seals, the recording of protests, the service of statements and the recording of facts witnessed in the course of their official duties.

(2) Notaries are also responsible for taking receipt of conveyances of property and for drawing up partial mortgage and partial land charge certificates.

(3) Notaries are, further, responsible for carrying out voluntary auctions. They are, as a rule, to carry out an auction of moveable items only if the auction is occasioned by the auction of immoveable items or by a property dispute recorded or mediated by the notary.

(4) Notaries are also responsible for mediating under the provisions of the Act to Reform Property Law in the Acceding Territory (*Sachenrechtsbereinigungsgesetz*).

(5) The extent to which notaries are responsible for creating and approving official seals in the context of proceedings to secure an estate is determined by the provisions of *Land* law.

#### **Section 21 Certification**

(1) Notaries are responsible for

1. certifying a right of representation and
2. certifying the existence or the registered office of a legal person or of a partnership with legal personality, a change in business or business name, a conversion or of other circumstances of legal consequence

based on an entry in the Commercial Register or a similar register evidencing such facts. The certificate has the same probative value as a certificate issued by the court of registration.

(2) Notaries may issue the certificate only after first having satisfied themselves of the fact that the entry has been made, based on inspection of the register or of a certified copy thereof. The date of inspection of the register or the date of issue of the copy is to be stated on the certificate.

(3) Notaries are, further, responsible for certifying a power of attorney established by legal act. They may issue the certificate only after first having satisfied themselves that the power of attorney has been established by inspecting a public or publicly certified certificate of power of attorney. The form of and the date on which the certificate of the power of attorney was presented to the notary are to be stated on the certificate.

## **Section 22**

### **Administration of oaths; recording declarations in lieu of oath**

(1) Notaries are responsible for the administration of oaths and for examinations on oath only if the oath or the examination on oath is necessary under the law of a foreign state or under the provisions of a foreign authority or it is otherwise necessary to assert rights abroad.

(2) Notaries are entitled to record declarations in lieu of an oath in all cases in which a statement of fact or testimony is to be substantiated for an authority or other agency.

## **Section 23**

### **Safekeeping and delivery of valuables**

Notaries are also responsible for taking receipt of money, securities and valuables which parties hand over to them for safekeeping or for delivery to third parties; sections 57 to 62 of the Notarial Recording Act remain unaffected.

## **Section 24**

### **Advisory services and representation of parties involved**

(1) The office of notary also encompasses the provision of other advisory services to the parties involved in the preventive administration of justice, in particular the drawing up of draft documents and advising of the parties involved. Unless other provisions impose restrictions, notaries are also authorised to represent parties before the courts and administrative authorities to that extent.

(2) Where lawyers commissioned as notary perform acts of the type referred to in subsection (1), it is to be assumed that they have acted in their capacity as notary if the act is intended to prepare or perform notarial functions of the types referred to in sections 20 to 23. In all other respects, it is to be assumed, in case of doubt, that they have acted in their capacity as lawyer.

(3) To the extent that notaries are authorised by law to file applications with the land registry or the authorities holding registers (in particular under section 15 (2) of the Land Registry Code, section 25 of the Shipping Register Code (*Schiffsregisterordnung*) and section 378 of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction) in the name of the parties involved, they are also authorised to withdraw any applications which have been filed. The declaration of withdrawal is effective once the notary adds his or her signature and official seal; certification of the signature is not necessary.

## **Division 4**

### **Other official duties**

## **Section 25**

### **Employing staff; authorisation to issue statutory instruments**

(1) Notaries may employ persons who are qualified to hold judicial office, who have passed the professional examination for civil servants required to hold the office of district notary or who hold the degree of *Diplom-Jurist* only if that notary's personal exercise of the office is not jeopardised thereby.

(2) In order to be able to safeguard the interests of the proper administration of justice, the *Land* governments or the agencies determined by them by way of a statutory instrument are authorised to determine by way of a statutory instrument that notaries may employ persons who are qualified to hold judicial office, who have passed the professional examination for civil servants required to hold the office of district notary or who hold the degree of *Diplom-Jurist* only if the supervisory authority has given permission therefor after having heard the chamber of notaries. The permission may be linked to ancillary provisions.

## **Section 26**

### **Formal declaration by persons employed**

Upon their being hired, persons employed by a notary must make a formal declaration of commitment to the notary pursuant to section 1 of the Act on the Formal Assignment of Responsibilities to Persons Other than Civil Servants. Particular reference is to be made to the provisions of section 14 (4) and section 18. Where a notary has associated himself or herself with other persons for the joint exercise of their profession and their employees have a single employment relationship with these persons, it is sufficient for one of the notaries to require the formal declaration to be made before him or her. Notaries must take appropriate measures to ensure that the persons they employ observe the obligation of confidentiality. Persons who are involved in a notary's professional activities as part of preparations for their own professional activity or in another auxiliary capacity are equal to persons employed by notaries. Sentences 1 to 3 do not apply to trainee notaries and trainee lawyers (*Referendare*).

## **Section 26a**

### **Availment of services**

- (1) Notaries may give service providers access to facts to which the obligation of confidentiality under section 18 applies without the consent of those involved to the extent that this is necessary to be able to avail themselves of such services. Service providers are other persons or agencies commissioned with rendering services by notaries in the exercise of their profession.
- (2) Notaries are obliged to carefully select their service providers. Cooperation must be terminated immediately where it cannot be guaranteed that a service provider will be able to fulfil the requirements set out in subsection (3).
- (3) Contracts with service providers must be made in text form. Such contracts must
1. oblige the service provider to maintain confidentiality and advise of the consequences under criminal law of any violation of that obligation,
  2. oblige the service provider to obtain knowledge of others' secrets only insofar as this is necessary in the fulfilment of the contract and
  3. stipulate whether the service provider is authorised to involve other persons in the fulfilment of the contract; where this is the case, the service provider must be required to oblige, in text form, those persons to maintain confidentiality.
- (4) When availing themselves of services which directly serve a single item of official business, notaries may only grant service providers access to others' secrets if the person concerned has consented thereto.
- (5) Subsections (2) and (3) also apply where notaries avail themselves of services to which those concerned have consented, unless those concerned have expressly waived the need to observe the requirements set out in subsections (2) and (3).
- (6) Subsection (3) does not apply in those cases in which the service provider is formally obliged pursuant to section 1 of the Act on the Formal Assignment of Responsibilities to Persons Other than Civil Servants. Subsection (3) sentence 2 does not apply if the service provider is bound by law to maintain confidentiality regarding the service to be rendered.
- (7) Other provisions which restrict a notary's ability to avail himself or herself of services and provisions concerning the protection of personal data remain unaffected.

## **Section 27**

### **Obligation to give notification of association for purpose of joint practice**

- (1) Notaries are required to notify the supervisory authority and their chamber of notaries without delay of the fact that they have established a joint practice or are sharing business premises with others. This duty of notification also applies to professional associations within the meaning of section 3 (1) sentence 1 no. 7 of the Notarial Recording Act. The name,

profession, other professional activities and place of activity of those involved must be notified. Section 9 remains unaffected.

(2) Upon request, notaries are required to submit to the supervisory authority and to their chamber of notaries the agreement on which the establishment of a joint practice or the sharing of business premises is based.

## **Section 28**

### **Guarantee of independence and impartiality**

Notaries are to take suitable precautions to guarantee that they maintain independence and impartiality in the exercise of their office, in particular as regards compliance with prohibitions of participation and other official duties under the provisions of this Code, of the Notarial Recording Act and of the Court and Notary Fees Act (*Gerichts- und Notarkostengesetz*).

## **Section 29**

### **Ban on advertising**

(1) Notaries must refrain from engaging in any commercial behaviour, in particular such advertising as conflicts with their public office.

(2) Where a publicity activity permitted in the performance of a notary's activities pursuant to section 8 is not compatible with the criteria of subsection (1), it is to be kept separate from publicity activities referring to work as a notary. Where a publicity activity within the meaning of sentence 1 mentions notarial activities, it is to be made clear that it does not refer to such notarial activities.

(3) Lawyers commissioned as notary who have established a joint practice pursuant to section 9 (2) with persons who are not active at that lawyer's seat or who maintain further law offices or branch offices may state their official designation as notary on business papers, in directories, in advertisements and on signs not affixed to an office only if reference is simultaneously made to the location of their office. Such reference must immediately follow the notary's official title, must correspond in appearance to such title and must include the word '*Amtssitz*' (location of office). Sentence 1 does not apply if the business papers, directories or advertisements make no reference to a joint practice pursuant to section 9 (2) or to further law offices or branch offices.

(4) Office signs and name plates may only be affixed to an office.

## **Section 30**

### **Duty to provide training**

(1) Notaries are to be involved to the best of their abilities in the training of trainee notaries and trainee lawyers.

(2) Notaries are to provide those trainees in their employ with meticulous professional training.

## **Section 31**

### **Conduct**

Notaries are to conduct themselves in accordance with their office in their dealings with other notaries, trainee notaries, courts, authorities, lawyers and other persons advising their clients.

## **Section 32**

### **(repealed)**

## **Section 33**

### **Electronic signature**

(1) Notaries must be in possession of a qualified certificate issued by a qualified trust service provider which can be verified in perpetuity and of the technical means by which to generate and validate qualified electronic signatures. When applying for a qualified certificate for electronic signatures for the first time, identification must be provided in the form of the notary's publicly certified signature placed at the bottom of the application. The qualified

certificate must also bear an attribute which identifies the holder as a notary and which also indicates the notary's office and the name of the *Land* and of the chamber of notaries in whose district the notary has his or her location of office.

(2) Notaries may only obtain their qualified certificate from a qualified trust service provider which can guarantee that the certificate will be immediately blocked as soon as an entry notifying the expiry of the notary's office or his or her suspension from office is made in the Directory of Notaries.

(3) Notaries are to administrate the electronic signature creation data required to generate qualified electronic signatures on a qualified electronic signature creation device. In derogation therefrom, they may also be administrated by the chamber of notaries or the Federal Chamber of Notaries if it is ensured that the qualified electronic signature can only be generated using a cryptographic key which is stored on a cryptographic hardware component.

(4) Notaries may not entrust the qualified electronic signature creation device or the cryptographic hardware component to any other persons. Notaries may not reveal any data which they use to identify themselves vis-à-vis the qualified electronic signature creation device or the cryptographic hardware component.

#### **Section 34** **Reporting requirements**

Notaries must immediately notify the supervisory authority and the chamber of notaries in whose district they have their location of office in the event that they ascertain or there is reasonable cause to believe that

1. their official seal has been permanently or temporarily lost or was misused, or a forgery of their official seal is being used,
2. the qualified electronic signature creation device has been lost, was misused or manipulated, or data used to identify them vis-à-vis the qualified signature creation device have become known to another person,
3. data or other precautions taken to protect the Electronic Document Archive, the Electronic Database of Notarial Records, the Central Register of Lasting Powers of Attorney or the Central Register of Wills against unauthorised access have been misused, manipulated or subject to unauthorised access.

In the case referred to in sentence 1 no. 2, notaries must in addition immediately occasion the blocking of the qualified certificate by the trust service provider and must present proof of such blocking when making the notification referred to in sentence 1. In the case referred to in sentence 1 no. 3, the chamber of notaries must immediately notify the Federal Chamber of Notaries where there is reason to believe that the security of the Electronic Document Archive, of the Electronic Database of Notarial Records, of the Central Register of Lasting Powers of Attorney or of the Central Register of Wills has been compromised, including in regard to data transmitted or stored by other agencies.

#### **Division 4a** **Keeping of records and registers**

##### **Section 35** **Keeping of records and registers**

(1) Notaries are obliged to keep records and registers in a manner which guarantees their availability, integrity, transparency and confidentiality. They are authorised to process the personal data in the records and registers, including special categories of personal data, which are required to carry out their official business. In particular, this encompasses

1. the involved parties' contact data,
2. data which were collected to identify the involved parties and



3. data which are necessary in relation to the subject matter of the official business or which are to be included at the involved parties' request.
- (2) Notaries may keep records and registers in paper form or electronic form, unless their form is prescribed under or on the basis of a law and to which subsection (1) sentence 2 and 3 applies accordingly. Notaries may also use aids in the keeping of records, whose confidentiality must likewise be guaranteed and to which subsection (1) sentence 2 and 3 applies accordingly. Where records are transferred to another agency for safekeeping, this must also encompass the related aids.
- (3) Records and registers in paper form may only be kept outside of a notary's office either with the chamber of notaries or with the permission of the supervisory authority. The notary's control over the records and registers must be guaranteed. Except in the case where records are kept with the chamber of notaries, records may be kept jointly only where a notary participates in a joint practice. The permission referred to in sentence 1 is to be granted where it is guaranteed that the requirements set out in subsection (1) and in sentence 2 are met. Permission may be linked to ancillary provisions. The chamber of notaries is to be heard before permission is given or revoked. The supervisory authority is to be notified where records and registers are kept with the chamber of notaries.
- (4) Notaries may only keep electronic records and registers outside their office in the Electronic Document Archive or in the Electronic Database of Notarial Records.
- (5) Only those persons may be enlisted in the keeping of records and registers who are in the notary's employ or, in the case of subsection (3) sentence 3, where a notary participates in a joint practice. Subsection (3) sentence 1 and subsection (4) remain unaffected.
- (6) At the end of the relevant retention period, the agency holding the records and registers offers the entries in the register of documents and the documents kept in the Electronic Document Archive and in the Special Archive to the competent public archive in accordance with the relevant provisions relating to archiving. In all other respects, the agency holding the records and registers is obliged to destroy records and registers kept in paper form and to delete electronic records and registers. Sentences 1 and 2 do not apply as long as, in an individual case, it is necessary for the agency holding them to continue to retain them.

### **Section 36**

#### **Authorisation to issue statutory instruments regarding records and registers**

(1) The Federal Ministry of Justice and Consumer Protection is to regulate, by way of a statutory instrument requiring the approval of the Bundesrat, further details concerning the records and registers to be kept by notaries and concerning their content and the manner in which they are to be kept. In particular, such statutory instrument is to regulate further details concerning

1. the documents which notaries must add to the records and the information which is to be included in the registers, including the data to be collected and the time limits to be observed in that regard,
2. retention periods,
3. the keeping of electronic records and registers pursuant to section 35 (2) and concerning the measures to be taken to guarantee their confidentiality, integrity, transparency and availability even beyond the end of a notary's period in office, including the permissible file formats, interfaces and data linkages between the records and registers,
4. the conditions under which a written document which is available in paper form need not be transferred into electronic form although this is required by or on the basis of a law.

When calculating the retention periods referred to in sentence 2 no. 2, particular account is to be taken of the purpose for which the records and registers are being made available with

a view to the requirements of the proper administration of justice and of the fact that the clarification of facts must still be possible in the event of public liability claims arising.

(2) The statutory instrument may provide that further information may or is, as a rule, to be included in the register of documents in addition to those entries which are necessary in order to be able to locate documents. It may also regulate further details concerning the use of the data stored in the register of documents

1. in electronic legal dealings with the courts, authorities and third parties,
2. in regard to the keeping of other records and registers by a notary and
3. for supervisory purposes.

### **Section 37 (repealed)**

#### **Division 5**

#### **Absence and inability to carry out duties; deputy notary**

### **Section 38**

#### **Notification of absence or inability to carry out duties**

If a notary plans to be absent from his or her location of office for more than one week or that notary is unable for factual reasons to carry out his or her duties for more than one week, that notary is required to notify the supervisory authority thereof without delay. The permission of the supervisory authority is required if the notary's absence from the location of office is to exceed one month.

### **Section 39**

#### **Deputy notary**

(1) The supervisory authority may appoint a deputy notary upon a notary's request for the duration of that notary's absence or inability to carry out his or her duties. The appointment may also be made from the outset for all cases of deputyship which arise during a specified period (permanent deputy). A further deputy, including a permanent deputy, may be appointed for the period in which the permanent deputy is also absent or unable to carry out his or her duties. Further, in the event of the appointment of a permanent deputy, a further deputy, including a permanent deputy, may be appointed for a trainee notary assigned to a notary.

(2) In the event of a notary being suspended from office, a deputy may also be appointed ex officio. This also applies where a notary fails to file a request as required by subsection (1) or section 48c although he or she is temporarily unable to properly exercise the office for health reasons.

(3) Only those persons may be appointed as deputy who have the personal aptitude within the meaning of section 5 (1) and (2) and the professional aptitude within the meaning of section 5 (5). Only a notary, trainee notary or retired notary is, as a rule, to be appointed as permanent deputy. After having heard the chamber of notaries, a lawyer may also be appointed as permanent deputy to a lawyer commissioned as notary. Except in the cases referred to in subsection (2), only those persons who have been proposed by the notary and are willing to take on the office are, as a rule, to be appointed. A custodian appointed pursuant to section 1814 of the Civil Code or a curator of absentees appointed pursuant to section 1884 of the Civil Code may also submit the request on the notary's behalf and propose the deputy.

(4) The provisions applicable to the notary apply accordingly to the deputy, with the exception of section 19a, unless otherwise regulated in the following.

### **Section 40**

#### **Form of appointment; official oath; revocation**

- (1) The appointment is to be communicated to the deputy in writing and without prejudice to publication in another manner. In derogation from section 44 of the Administrative Procedure Act, an appointment is only null and void if it does not meet this requirement and the files contain no reference to the fact that an appointment was to be made.
- (2) Deputies must swear the official oath (section 13) before the president of the regional court before commencing their notarial functions. If a deputy has already been sworn in as notary, deputy notary or administrator for a notary, then it is generally sufficient for his or her attention to be drawn to that previous oath.
- (3) The deputy's appointment may be revoked at any time.

#### **Section 41**

##### **Deputy's exercise of office**

- (1) Deputies perform the duties of office at the notary's expense. They are to make an addition to their signature to indicate that they are acting in the capacity as deputy and use the notary's official seal and stamp.
- (2) Deputies are, as a rule, to refrain from exercising the office to the extent that the notary they are representing would be prohibited from exercising the office.

#### **Section 42**

##### **Competence for disputes between notary and deputy**

The regional courts have exclusive competence as regards pecuniary disputes between the notary and the notary's deputy concerning remuneration or liability for breaches of official duty, regardless of the value in dispute.

#### **Section 43**

##### **Remuneration of ex-officio appointed deputy**

A notary is required to pay an ex-officio appointed deputy (section 39 (2)) appropriate remuneration.

#### **Section 44**

##### **Duration of deputy's authority**

- (1) The deputy's authority commences upon his or her taking on the office and, unless the appointment is revoked beforehand, ends upon the office being transferred to the notary. During this time the notary is, as a rule, to refrain from exercising his or her office.
- (2) The official acts of the deputy are not rendered invalid on account of the conditions required for the deputy's appointment pursuant to section 39 not having been met or subsequently having ceased to apply.

#### **Section 45**

##### **Safe custody in case of absence or inability to carry out official duties**

- (1) If no deputy has been appointed for the duration of a notary's absence or inability to carry out official duties, that notary may deposit his or her records and registers and any officially deposited documents and valuables in safe custody with another notary in the district of the same or of a neighbouring local court in his or her official district or with the chamber of notaries in whose district that notary has his or her location of office. Section 51a applies accordingly. The chamber of notaries and supervisory authority are to be notified of the fact that the deposit in safe custody with another notary has been made. The supervisory authority is to be notified of the fact that the deposit in safe custody with the chamber of notaries has been made.
- (2) It is for the notary with whom or the chamber of notaries with which the records and registers have been deposited in safe custody to issue execution copies and copies and to grant inspection in place of the notary who is absent or unable to carry out official duties.
- (3) If the notary has not deposited his or her records and registers in safe custody pursuant to subsection (1) for the duration of his or her absence or inability to carry out official duties and a request is made for the issue of an execution copy or copy of the records or for inspection of the records, then it is for the chamber of notaries in whose district the notary

has his or her location of office to take the records and registers into safe custody and to carry out the official act being requested. Section 51a (1) and (3) applies accordingly.

(4) It is for the notary with whom records and registers have been deposited in safe custody to issue execution copies and certified copies, adding his or her signature and using his or her official seal or stamp. This applies accordingly to the chamber of notaries with which records and registers have been deposited in safe custody. Reference is, as a rule, to be made in the entry regarding the making of the execution copy to the notary's absence or inability to carry out official duties.

(5) Where records and registers are held in safe custody by another notary, the costs of issuing execution copies or copies accrue to that notary. Where records and registers are held in safe custody by a chamber of notaries, the costs of issuing execution copies or copies accrue to it; the provisions of the Court and Notary Fees Act relating to notaries to whom the costs of their own activities accrue apply accordingly.

#### **Section 46**

##### **Breach of official duty by deputy**

In addition to the deputy, the notary is also jointly and severally liable to the injured party for a breach of official duty on the part of the deputy. The notary alone is liable in the relationship between the notary and the deputy. Sentence 2 does not apply if the deputy committed the breach of official duty with intent or gross negligence; in such cases, the deputy alone is liable in the relationship between the deputy and the notary.

#### **Division 6**

##### **Expiry of office; suspension from office; administrator for notary**

#### **Section 47**

##### **Expiry of office**

The office of notary expires upon

1. discharge from office (section 48),
2. reaching retirement age (section 48a) or death,
3. resignation from office (sections 48b and 48c),
4. final loss of membership of a bar association in the case referred to in section 3 (2),
5. a final criminal conviction leading to loss of office (section 49),
6. final removal from office (section 50),
7. a final judgment handed down by a disciplinary court in which dismissal from office was imposed (section 97 (1) sentence 1 no. 3 and (3)).

#### **Section 48**

##### **Discharge**

A notary may request to be discharged from office at any time. The request must be made in writing to the *Land* department of justice. Until such time as the order of discharge has been received, the request may be withdrawn within two weeks following its receipt by the *Land* department of justice, if the competent authority consents even after the expiry of that time limit. The discharge is to be pronounced by the *Land* department of justice for the date applied for.

#### **Section 48a**

##### **Retirement age**

Notaries reach retirement age at the end of that month in which they reach the age of 70.

## **Section 48b**

### **Resignation from office to care for others**

(1) Whoever, whilst holding the office of notary, is actually caring for a child below the age of 18 years or a close relative demonstrably needing nursing care (section 7 (3) of the Act on Caregiving Leave) may, with the permission of the supervising authority, resign from office. Where a pregnant notary intends to resign from office in accordance with sentence 1, the period of resignation from office may also include the period referred to in section 3 (1) of the Act on the Protection of Working Mothers (*Mutterschutzgesetz*). Where possible, a request to resign from office is, as a rule, to be filed six months in advance, stating the intended period of resignation from office. The total length of one or more periods of resignation from office may not exceed 12 years.

(2) If a notary declares in the request to resign from office that he or she wishes to return to notarial office at his or her previous location of office within three years, then that notary is re-appointed there within that period. Section 97 (3) sentence 2 applies accordingly. The total length of one or more periods of resignation from office in accordance with sentence 1 is limited to three years, unless permission is granted for a longer period by way of exception.

(3) When taking the decision on the permission, account is to be taken of the concerns of the proper administration of justice. The permission may be linked to ancillary provisions, with the exception of a revocation proviso. The chamber of notaries is to be heard before the decision is taken. Where there are indications that the case referred to in section 56 (3) sentence 2 may arise, the notary's attention is to be drawn thereto.

(4) If the conditions of subsection (1) sentence 1 or sentence 2 cease to exist, the notary is required immediately to notify the supervisory authority thereof. If, after such conditions cease to exist, the notary does not make reasonable efforts to be re-appointed, that notary loses the entitlements under subsection (2) sentence 1 and subsection (5).

(5) If, after resigning from office to care for another person, a notary applies to be re-appointed but that re-appointment is not made in accordance with subsection (2) sentence 1, then when selecting between several suitable persons account is to be taken in that notary's favour that he or she has already exercised a notarial function and was given permission to resign from that function.

## **Section 48c**

### **Resignation from office for health reasons**

(1) Notaries may resign from office with the permission of the supervisory authority where it is medically certified that

1. they are unable, for health reasons, properly to exercise their office, but there is the possibility that they will regain the capacity required within one year or
2. resignation from office for one year at most is indicated in order to avert the threat of their being unable to properly exercise their office for health reasons.

(2) In the case referred to in subsection (1) no. 1, the medical certificate is, as a rule, to contain information about when it is likely that capacity will be regained. In the case referred to in subsection (1) no. 2, it is, as a rule, to contain information about the length of the period of resignation from office which is indicated. Where, based on medical opinion, it may be appropriate for permission to be linked to time limits, conditions or stipulations, the certificate is, as a rule, also to include such information. The supervisory authority may require that a certificate issued by a medical officer be presented.

(3) If the notary declares in the request to resign from office that he or she wishes to take up office again at his or her previous location of office after the reason set out in subsection (1) sentence 1 ceases to exist, then that notary is re-appointed there within one year. A period of resignation from office in accordance with sentence 1 is to be credited against the total period as set out in section 48b (1) sentence 4. In all other respects, section 48b (2)

sentence 2 and 3 and (3) to (5) applies accordingly to a period of resignation from office in accordance with subsection (1).

#### **Section 49** **Criminal conviction**

The criminal conviction of a notary leads to the loss of office in the same way as it does for civil servants under section 24 (1) of the Civil Service Status Act (*Beamtenstatusgesetz*).

#### **Section 50** **Removal from office**

(1) A notary is to be removed from office

1. if that notary is not qualified to hold judicial office;
2. if that notary has not taken out professional indemnity insurance as required by section 19a;
3. if that notary refuses to swear the official oath prescribed in section 13;
4. if that notary takes on a salaried office or pursues an activity which requires permission pursuant to section 8 (3) and the admission pursuant to section 8 (1) sentence 2 or the permission required pursuant to section 8 (3) is not available at the point at which the *Land* department of justice takes its decision on the removal from office;
5. if, contrary to section 8 (2), that notary pursues a further professional activity or, contrary to section 9 (1) or (2), has established a joint practice or shares business premises with other persons;
6. if that notary is in financial difficulties; the notary is presumed to be in financial difficulties if insolvency proceedings have been opened against the notary's assets or the notary has been entered in the list of debtors (section 882b of the Code of Civil Procedure);
7. if, for health reasons, the applicant is unable to properly exercise the office of notary not merely on a temporary basis;
8. if that notary's economic circumstances, the manner of his or her economic management or management of items deposited in safe custody jeopardise the interests of the consumers of legal services;
9. if that notary repeatedly commits a gross breach of
  - a) prohibitions of participation under section 3 (1) of the Notarial Recording Act or
  - b) official duties under section 17 (2a) sentence 2 no. 2 of the Notarial Recording Act.

(2) A notary is, generally, to be removed from office if

1. it was not known when the appointment was made that the notary was guilty of conduct which makes him or her appear unworthy of exercising the notarial function,
2. the appointment was effected by means of coercion, fraudulent misrepresentation or bribery or
3. the appointment was made by an authority which was not competent and was not confirmed by the authority which was competent.



(3) Competence for removal lies with the *Land* department of justice. It takes its decision after hearing the chamber of notaries.

(4) Section 5 (3) applies accordingly to proceedings directed at removal from office under subsection (1) no. 7.

## **Section 51**

### **Safe custody following expiry of office or moving location of office**

(1) Where the office of notary has expired or a notary's notarial jurisdiction changes on account of moving location of office, that chamber of notaries is responsible for holding in safe custody the notary's records and registers and officially deposited documents and valuables in whose district the notary had his or her location of office. The *Land* department of justice may delegate competence for such safe custody to another chamber of notaries or to a notary. Section 35 (1) and section 45 (2), (4) and (5) apply accordingly. Several chambers of notaries may join together to jointly keep records and registers in safe custody; each chamber of notaries' own power of disposal must be upheld. The fact of the joint keeping of records and registers in safe custody is to be notified to the *Land* department of justice.

(2) The president of the regional court in whose district the notary had his or her location of office is to destroy the notary's official seal and stamp.

(3) If, after the expiry of a notary's office or the moving of a notary's location of office, that notary is re-appointed as notary and assigned a place for the location of office within his or her previous notarial jurisdiction, the *Land* department of justice may transfer competence for safe custody back to that notary. The records, registers, officially deposited documents and valuables are to be handed to the notary in that agency in whose safe custody they were last deposited. Section 51a applies accordingly, with the exception of subsection (1) sentence 2.

(4) If a notary's location of office moves within the same municipality, the notary continues to be responsible for safe custody even if jurisdiction changes as a result. The notary's official seal and stamp are not to be handed in.

(5) The *Land* department of justice regulates the handing over to a public archive of records and registers whose retention period has not yet expired. Any handing over in accordance with sentence 1 is without prejudice to the competence of the agency holding the records and registers in safe custody which goes beyond their mere safekeeping. Inspection of notarial instruments and registers which were handed over pursuant to sentence 1 is exclusively governed by sections 18a to 18d of this Code and section 51 (3) of the Notarial Recording Act.

## **Section 51a**

### **Handover of items kept in safe custody**

(1) In the cases referred to in section 51 (1), notaries are obliged to hand over the records and registers and officially deposited documents and valuables to the agency responsible for their safe custody and to give that agency access to electronic records and registers. They must hand over their official seal and stamp to the president of the regional court. The supervisory authority may order that the items referred to in sentences 1 and 2 be handed over. An objection to and rescissory action against the order to hand in such items do not have suspensive effect.

(2) The records and registers and the officially deposited documents and valuables referred to in subsection (1) sentence 1 are to be handed over in an orderly state and in a condition suited to their keeping in safe custody. If notaries hand over records, registers and officially deposited documents and valuables in a state which is not orderly and a condition which is not suited to their keeping in safe custody, the competent agency may bring about an orderly state which is suited to such safe custody, at the notary's expense. Sentence 2 applies accordingly to the destruction or deletion of records and registers whose retention period had already expired at the point at which responsibility for their safekeeping had been transferred.

(3) The agency responsible for the safe custody is not obliged to ensure the completeness of those records and registers and documents officially deposited with the notary which are handed in.

## **Section 52**

### **Continued use of official designation**

(1) Upon the expiry of office, authorisation to use the official designation of '*Notarin*' or '*Notar*' expires. It is likewise not permissible to use the official designation together with an addition making reference to the expiry of office.

(2) If the office of a notary has expired for the reasons referred to in section 47 nos. 1 to 4, with the exception of death or removal from office for one of the reasons referred to in section 50 (1) no. 7, then the *Land* department of justice may grant the former notary permission to continue to use the official designation with the addition of '*außer Dienst*' (retired), which may also be abbreviated to '*a. D.*'. Such permission may only be granted to lawyers commissioned as notary if they are still permitted to use their professional legal designation.

(3) The *Land* department of justice may withdraw or revoke permission to use the designation of '*Notarin außer Dienst*' or '*Notar außer Dienst*' if circumstances subsequently become known or arise which would result in the expiry of the notary's office for the reasons referred to in section 47 nos. 5 to 7. Withdrawal or revocation for the reasons referred to in section 50 (1) no. 7 are excepted therefrom. In the case of lawyers commissioned as notary, permission to use the designation also lapses if they are no longer permitted to use their professional legal designation. If the permission referred to in sentence 3 has lapsed, it may be granted once more after permission has again been given to use the professional legal designation.

## **Section 53**

### **Taking over rooms or employees from retired notary**

(1) Where the office of a full-time notary has expired or his or her location of office has moved, another notary who is already established at the original location of office requires the permission of the *Land* department of justice to be able to move his or her office into the rooms occupied by the notary leaving office or to take on employees who had a particular relationship of trust with the retired notary. Permission may only be refused if this is necessary in the interest of the administration of justice.

(2) The validity of legal acts concluded on the occasion of the taking over or hiring of employees is not affected by a breach of subsection (1).

## **Section 54**

### **Suspension from office**

(1) A notary may be suspended from office by the supervisory authority

1. if the supervisory authority's adult guardianship court has communicated a decision pursuant to section 308 of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction;

2. if it feels that the conditions of section 50 are met;

3. if that notary has stayed outside of his or her location of office for more than two months without the consent of the supervisory authority.

An objection to and rescissory action against the suspension from office do not have suspensive effect.

(2) The effects of suspension from office arise by operation of law

1. where a notary is ordered into remand detention in criminal proceedings: for the duration of the remand detention;

2. where a lawyer commissioned as notary has been banned from practising and representing clients pursuant to section 150 of the Federal Code for Lawyers or banned from representing clients in civil-law matters pursuant to section 114 (1) no. 4 of the Federal Code for Lawyers: for the duration of the ban;

3. where an order is issued against a lawyer commissioned as notary to withdraw or revoke admission to the legal profession pursuant to section 14 of the Federal Code for Lawyers with immediate enforcement: from the time of service of the order throughout its effective period.

(3) The provisions on the suspension from the office of a notary following the institution of disciplinary proceedings remain unaffected.

### **Section 55**

#### **Safe custody and official acts following suspension from office**

(1) Where a notary has been suspended from office and neither a deputy notary nor an administrator for a notary has been appointed, then during this period that chamber of notaries is responsible for the safe custody of the notary's records and registers and officially deposited documents and valuables in whose district the notary has his or her location of office. The notary's records and registers which are kept in paper form and officially deposited documents and valuables, and the notary's official seal, stamp and official sign are to be taken into safe custody by the chamber of notaries for the duration of the suspension from office. Section 45 (1) sentence 4, (2), (4) and (5) and section 51a (3) apply accordingly.

(2) A notary who has been suspended from office is obliged to surrender his or her records, registers, officially deposited documents and valuables, official seal and stamp to the chamber of notaries. The supervisory authority may order the surrender of the items referred to in sentence 1. An objection to and rescissory action against the order for surrender do not have suspensive effect.

(3) The notary is to refrain from undertaking any official acts throughout the duration of the suspension from office. A breach does not, however, affect the validity of the official act. The notary may no longer perform notarial functions under section 23.

### **Section 56**

#### **Administrator for notary**

(1) Where the office of a full-time notary has expired or that notary's location of office has moved, the supervisory authority is generally to entrust an administrator for a notary with temporarily exercising the office of notary in that notary's place. If, in the case referred to in sentence 1, the notarial position is to be re-advertised, subsection (2) applies accordingly.

(2) Where a lawyer commissioned as notary leaves office on account of the expiry of the office, an administrator for a notary may be appointed in that lawyer's place to wind up the notarial business for a period of up to one year if this is felt to be necessary. In justified exceptional cases this period may be extended beyond one year. An administrator for a notary appointed in accordance with sentence 1 is authorised in addition to exercise new official functions only within the first three months.

(3) Where a notary has resigned from office in accordance with section 48b (2) sentence 1 or section 48c (3) sentence 1, an administrator for a notary is to be appointed for the duration of the resignation from office. Where a suitable administrator for a notary is no longer available for the duration of the period of resignation from office, the previous notary may be called on to apply for his or her re-appointment ahead of time. If the notary does not do so, he or she loses the entitlement under section 48b (2) sentence 1 or section 48c (3) sentence 1.

(4) In the cases referred to in section 39 (2), an administrator for a notary may be appointed instead of a deputy notary if the appointment of a deputy notary does not appear expedient.

(5) If, in the case referred to in section 8 (1) sentence 2, a notary does not himself or herself exercise the office, subsection (1) applies accordingly in the case of a full-time notary. In the case of a lawyer commissioned as notary, an administrator for a notary may be appointed.

(6) Only those persons may be appointed as administrator for a notary who have the personal aptitude within the meaning of section 5 (1) and (2) and the professional aptitude within the meaning of section 5 (5). Trainee notaries are obliged to take over the office of an administrator for a notary.

(7) The appointment of an administrator for a notary may be revoked ahead of time if there is important reason to do so.

### **Section 57**

#### **Exercise of duties and appointment of administrator for notary**

(1) Unless otherwise provided, administrators for a notary are subject to the same provisions which are applicable to notaries.

(2) Administrators for a notary are appointed by the *Land* department of justice, after having heard the chamber of notaries, by delivery of a certificate of appointment. Section 12 (2) and section 40 (2) apply accordingly.

### **Section 58**

#### **Continuing notarial functions; costs claimed**

(1) Administrators for a notary are responsible for holding in safe custody the records and registers of that notary whom they have been appointed to replace and for holding in safe custody the documents and valuables officially deposited with that notary. If records, registers, officially deposited documents and valuables have already been deposited in safe custody with the chamber of notaries when an administrator for a notary is appointed, these are generally to be returned. Section 51a (3) applies accordingly.

(2) Administrators for a notary continue that official business which the notary had already begun. They are entitled to take receipt of those fees which become due after they have taken over the notary's official business. However, in the relationship with the party liable to pay the fees, the administrator must allow those advances paid to the notary before he or she took over the office to be set off.

(3) Insofar as the notary who has left office or his or her legal successor is entitled to the fees, it is for the administrator for a notary to issue an enforceable copy of the cost calculation (section 89 of the Court and Notary Fees Act); if the administrator refuses to issue the copy, the notary or his or her legal successor may apply for a decision from the regional court under section 127 of the Court and Notary Fees Act. If the notary has been assigned to another location of office, that notary and the administrator remain authorised to issue the enforceable copy. The administrator for a notary is to grant the notary inspection of the records and registers; the notary bears any costs arising.

### **Section 59**

#### **Remuneration; settling of accounts with chamber of notaries**

(1) Administrators for a notary conduct the office for the account of the chamber of notaries against payment of appropriate remuneration to be determined by it. Administrators are required to submit monthly invoices to the chamber of notaries, unless another agreement has been reached. If they do not pay the chamber of notaries the amounts due to it, these may be collected in the same way as outstanding membership dues.

(2) The chamber of notaries may assert a right to a set-off or a right of retention in respect of an administrator's remuneration only to the extent that this is attachable or it has a right to compensation on account of an intentional unlawful act.

(3) The chamber of notaries may agree a rule which differs from subsection (1) sentence 1 and 2 in general or in the individual case. Subsection (2) does not apply in such a case.

### **Section 60**

#### **Surpluses from administration of notarial affairs**

(1) The surpluses generated from the administration of notarial affairs for the account of the chamber of notaries must primarily serve the welfare of members of the profession and their surviving dependants.

(2) Where welfare institutions have been established pursuant to section 67 (4) no. 2, any remaining surpluses are to be paid to these institutions. Where no such welfare institutions exist, any remaining surpluses accrue to the chamber of notaries.

### **Section 61**

#### **Breach of official duty by administrator for notary**

(1) In addition to the administrator for a notary, the chamber of notaries is also jointly and severally liable vis-à-vis the injured party for a breach of official duty on the part of the administrator for a notary; in the relationship between the chamber of notaries and the administrator for a notary the latter alone is liable. The same applies insofar as an administrator for a notary is liable for breaches of official duty on the part of a deputy notary or of a trainee notary under section 46 or section 19 (2). Section 19 (1) sentence 2 and 3 applies accordingly. The chamber of notaries' liability is limited to the amount of the minimum insurance cover of those insurances which must be taken out in accordance with subsection (2).

(2) The chamber of notaries is required to take out insurance to cover itself and an administrator for a notary against losses resulting from the liability under subsection (1), and such insurance cover which must meet the requirements set in section 19a and section 67

(3) no. 3. An administrator for a notary is, as a rule, also entitled to claim against the liability insurance in his or her own name.

(3) The state is not liable for breaches of official duty on the part of an administrator for a notary.

### **Section 62**

#### **Competence for disputes between chamber of notaries and administrator for notary**

The regional courts alone are competent as regards pecuniary disputes between the chamber of notaries and an administrator for a notary concerning remuneration, the settling of accounts (section 59) or liability for breaches of official duty, regardless of the value in dispute.

### **Section 63**

#### **Inspection by chamber of notaries**

(1) Administrators for a notary are obliged to grant inspection of records and registers and of documents deposited with them in safe custody to persons commissioned by the chamber of notaries. Section 78i remains unaffected.

(2) The supervisory authority's powers of audit remain unaffected.

### **Section 64**

#### **Duration of administrator for notary's authority; claims for costs**

(1) The office of an administrator for a notary appointed for a full-time notary in accordance with section 56 (1) sentence 1, (3) sentence 1 or (5) sentence 1 ends upon

1. a new notary being appointed,
2. the notary who resigned from office in accordance with section 48b (2) sentence 1 or section 48c (3) sentence 1 being re-appointed or
3. a notary who has been suspended from office or a notary who was unable, for personal reasons, to carry out any duties in accordance with section 8 (1) sentence 2 taking over the office again.

In the case referred to in sentence 1, the official authority of an administrator for a notary continues until he or she has been informed by the *Land* department of justice that the office has ended. The office of an administrator for a notary appointed for a full-time notary under section 56 (1) sentence 2 ends upon the expiry of the period for which that administrator was appointed.

(2) The office of an administrator for a notary appointed for a lawyer commissioned as notary under section 56 (2) sentence 1, (3) sentence 1 or (5) sentence 2 ends upon the expiry of the period for which that administrator was appointed. Such office also ends in the cases referred to in subsection (1) sentence 1 no. 2 and no. 3; in such cases, subsection (1) sentence 2 applies accordingly.

(3) Where, in the cases referred to in subsection (1) sentence 1 no. 2 and no. 3 and subsection (2) sentence 2, the previous notary takes over the office again or the records, registers, officially deposited documents and valuables are deposited in safe custody with the newly appointed notary pursuant to section 51 (1) sentence 2, the notary continues that official business which the administrator had already begun. The notary is entitled to take receipt of those fees which become due after he or she took over the office. However, in the relationship with the party liable to pay the fees, the notary must allow those advances paid to the administrator for a notary before he or she took over the office to be set off.

(4) After the end of the office of an administrator for a notary, the fees to which he or she is entitled are collected by the chamber of notaries in its own name. Sections 19, 88 to 90 and 127 of the Court and Notary Fees Act apply accordingly. The chamber of notaries may commission a newly appointed notary or a notary who has been reinstated in office with collecting any outstanding fees at its expense.

#### **Division 7**

#### **General provisions on administrative proceedings**

##### **Section 64a**

##### **Applicability of acts on administrative procedure**

Unless otherwise provided, the Administrative Procedure Act applies to federal authorities and the acts on administrative procedure of the *Länder* apply to the authorities of the *Länder* in respect of administrative proceedings under this Code or under a statutory instrument issued on the basis of this Code.

##### **Section 64b**

##### **Appointment of deputy**

Where a deputy is appointed for a notary in administrative proceedings conducted under this Code, a lawyer or notary is, as a rule, to be appointed.

##### **Section 64c**

##### **Substitution of written form**

If this Code or a statutory instrument issued on the basis of this Code provides that a declaration be made in written form, the declaration may also be submitted via the special electronic notarial mailbox if the person making the declaration and the recipient both have such a mailbox. If the declaration is to be made by a natural person, the document must bear that person's qualified electronic signature or must be signed and posted by that person themselves. A special electronic official mailbox is equal to the special electronic notarial mailbox within the meaning of sentence 1.

##### **Section 64d**

##### **Transmission of data**

(1) Courts and authorities, including professional governing bodies, transmit to the agency responsible for taking a decision those data concerning persons whose knowledge, in the transmitting agency's opinion, is necessary in relation to

1. an appointment as notary, a notary's suspension from office or expiry of office,
2. an appointment as notary's deputy or an administrator for a notary or the revocation thereof,
3. an appointment as trainee notary or a trainee notary's discharge from service,



4. the withdrawal or revocation of a permission, an authorisation or exemption or
  5. the institution or conduct of proceedings concerning a breach of official duty.
- (2) Such transmission is not made where
1. it would affect the data subject's interests meriting protection and the recipient's interest in the information does not override the data subject's interest in the transmission not being made or
  2. special statutory regulations concerning the use of data preclude it.

Sentence 1 no. 2 does not apply to the obligations of confidentiality of persons working for a professional governing body of a liberal profession in the area of application of this Code and to tax secrecy under section 30 of the Fiscal Code (*Abgabenordnung*).

## **Part 2** **Chambers of notaries and Federal Chamber of Notaries**

### **Division 1** **Chambers of notaries**

#### **Section 65** **Formation; seat; authorisation to issue statutory instruments**

- (1) The notaries who are appointed within the district of a higher regional court constitute a chamber of notaries. The *Land* government or an agency determined by it by way of a statutory instrument may, however, determine, by way of a statutory instrument, that several higher regional court districts, or parts of higher regional court districts, or one higher regional court district together with parts of another higher regional court district constitute the district of a chamber of notaries.
- (2) A chamber of notaries has its seat at the place of the higher regional court. In the case referred to in subsection (1) sentence 2, the *Land* government or the agency determined by it determines the seat.

#### **Section 66** **By-laws; supervision; report**

- (1) A chamber of notaries is a corporation under public law. A chamber of notaries' by-laws and their amendments are adopted by the assembly of the chamber; they require the approval of the *Land* department of justice and are to be published on the chamber of notaries' website, indicating the date of their entry into force.
- (2) The *Land* department of justice exercises state supervision over the chambers of notaries. Such supervision is limited to ensuring compliance with the law and with the by-laws, in particular the duties assigned to the chambers of notaries.
- (3) At the end of the business year each chamber of notaries submits to the *Land* department of justice a report on its activities in the past year and on the situation regarding those notaries and trainee notaries who are active in the chamber of notaries' area of responsibility.

#### **Section 67** **Tasks; authorisation to issue statutory instruments**

- (1) A chamber of notaries represents its member notaries collectively. It must ensure that notaries and trainee notaries exercise their profession lawfully and conscientiously, support the supervisory authorities in their activities, promote the administration and application of the law of notaries, and vouch for their members' reputation.
- (2) A chamber of notaries is responsible for determining, in guidelines, details of the official duties of its members under statutory provisions and the statutory instruments issued on their basis. Section 66 (1) sentence 2 applies accordingly. The guidelines may contain more detailed regulations on

1. maintaining the independence and impartiality of a notary,
2. the conduct to be observed pursuant to section 14 (3),
3. safeguarding third-party asset-related interests,
4. complying with the duty to exercise the office in person,
5. the establishment, conduct, continuation and end of a joint practice or other admissible forms of professional cooperation, and on the sharing of business premises,
6. the types of precautions to be taken pursuant to section 28,
7. conduct to be observed pursuant to section 29, in particular in relation to information concerning notarial functions, conduct in the public domain, business papers, the use of titles and other professional designations, the inclusion of the notary's name in directories, and the affixing of office signs and name plates under the provisions of *Land* law,
8. employing and training members of staff,
9. the principles to be observed when recording documents outside of the notarial jurisdiction and office,
10. the required extent of continuing professional training,
11. official duties in relation to other notaries, trainee notaries, courts, authorities, lawyers and other persons advising the notary's clients.

(3) In addition to the tasks assigned to chambers of notaries by law, it is incumbent upon them to

1. make available the funding needed for the continuing professional training of notaries, their assistants and trainee notaries, and for other burdens carried jointly by the profession;
2. regulate the training and examination of notarial assistants;
3. conclude insurance contracts to supplement the professional indemnity insurance as required by section 19a in order to also insure against those breaches of official duty which are not covered by those insurance contracts taken out as required by section 19a because the resulting financial losses exceed the insurance cover or because they are excluded from insurance protection under general insurance conditions on account of being intentional acts. The sum insured for each insured notary and for each insured event under these insurance contracts must amount to at least 250,000 euros for damage resulting from deliberate breaches of official duty and at least 500,000 euros for damage resulting from other breaches of official duty; the benefits paid by the insurer for all losses caused by a notary in one insurance year may, however, be limited to four times the amount of the minimum insurance cover. Section 19a (7) applies accordingly. The *Land* governments or the agencies determined by them by way of a statutory instrument are authorised, by way of a statutory instrument and taking account of possible damages, to determine amounts up to which the insurer's overall benefits may be limited in the insurance contracts for all damage caused by all insured notaries in one insurance year;
4. administrate notarial data and technical access authorisations to the Electronic Document Archive and the Electronic Database of Notarial Records;

5. confirm a person's status as notary or administrator for a notary and other official or professional details when issuing qualified certificates; the chamber of notaries may require that such qualified certificates be blocked.

(4) Chambers of notaries may take on other tasks corresponding to the purpose of their establishment. They may, in particular, maintain

1. welfare institutions,
2. pension funds as further regulated under the provisions of *Land* law,
3. facilities alone or together with other chambers of notaries whose purpose is to conclude, as the insurer, those insurance contracts listed under subsection (3) no. 3 to cover those risks resulting from breaches of official duty which have been caused by the intentional acts of notaries,
4. facilities alone or together with other chambers of notaries which enable benefits to be paid without any legal obligation for the following:
  - a) damage owing to intentional acts by notaries which are not covered by insurance contracts under subsection (3) no. 3,
  - b) damage arising on account of documents held in safe custody which can no longer be located and which are not covered by section 19a or by insurance contracts under subsection (3) no. 3 and for which the injured party cannot obtain compensation by any other reasonable means; the amount of the payment is limited to 500,000 euros per document.

(5) Chambers of notaries are, further, to render expert opinions when requested to do so by the *Land* department of justice, a court or an administrative authority in matters pertaining to notaries.

(6) The *Land* department of justice immediately informs the chamber of notaries of the following, stating the relevant dates in each case:

1. the appointment of a notary, a deputy notary or an administrator for a notary,
2. the expiry of the office of a notary or of an administrator for a notary and the revocation of the appointment of a deputy notary,
3. a decision as per section 8 (1) sentence 2,
4. any suspension from office,
5. the transfer of a notary's office,
6. changes relating to competence for safe custody pursuant to section 51 (1) sentence 2 and (3).

(7) (repealed)

#### **Section 68** **Constituent bodies**

The constituent bodies of a chamber of notaries are its executive board and the assembly of the chamber.

#### **Section 69** **Executive board**

(1) Notwithstanding section 70, the executive board exercises the powers of a chamber of notaries. In urgent cases it takes a decision instead of the assembly of the chamber, whose approval must be subsequently obtained.

(2) The executive board comprises a president, a deputy and further members. The members of the executive board are elected by the assembly of the chamber for a four-year term of office. The members of the executive board act in an honorary capacity. However, they may receive appropriate compensation for their activities and reimbursement of their necessary expenses.

(3) Where full-time notaries and lawyers commissioned as notary are appointed in the chamber of notaries' district, the president must be a member of one and the president's deputy must be a member of the other professional group. The other members of the executive board must appropriately represent the two professional groups.

(4) The following may not be elected as a member of the executive board:

1. anyone who has been suspended from the office of notary,
2. anyone against whom a written reprimand or a fine has been imposed on the basis of disciplinary proceedings conducted within the last five years,
3. anyone against whom dismissal from previous office or dismissal from office for a definite period has been imposed within the last 10 years,
4. anyone who has been dismissed from office within the last 15 years,
5. anyone against whom disciplinary proceedings were dispensed with under section 110 (4) within the last five years if it is likely that a written reprimand or a fine would have been imposed in those proceedings without imposition of the other penalty or
6. anyone against whom a disciplinary measure was dispensed with under section 14 (1) of the Federal Disciplinary Act in conjunction with section 96 (1) sentence 1 within the last five years.

(5) Further grounds for exclusion may be laid down in the chamber of notaries' by-laws.

#### **Section 69a**

##### **Obligation of confidentiality; availment of services**

(1) The members of the executive board are bound to maintain confidentiality concerning those matters pertaining to notaries, trainee notaries and other persons which become known to them whilst serving on the executive board. This also applies after they retire from the executive board. The obligation to maintain confidentiality does not apply to facts

1. which need to be passed on in the course of performing their duties,
2. which the data subject has agreed may be passed on,
3. which are obvious, or
4. which, by dint of their importance, do not necessitate confidentiality.

Sentences 1 to 3 also apply to employees of the chambers of notaries and of other facilities and institutions referred to in section 67 (4) and to persons whose services are enlisted by the chamber of notaries or the members of its executive board. The persons referred to in sentence 4 are to be instructed in text form about their obligation of confidentiality.

(2) In proceedings before the courts and authorities, the persons referred to in subsection (1) may not testify about matters which are subject to their obligation of confidentiality without permission therefor having been granted. Permission to testify is granted at the reasonable discretion of the executive board of the chamber of notaries. Permission is, as a rule, to be refused only where this is irrefutably necessary on account of having to take account of the status or tasks of a chamber of notaries or the legitimate interests of a person about whom facts have become known. Section 28 (2) of the Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz*) remains unaffected.

(3) Where chambers of notaries avail themselves of the services of others, then in relation to matters which are subject to the notary's obligation of confidentiality under section 18, section 26a (1) to (3), (6) and (7) applies analogously.

#### **Section 69b** **Sections**

(1) The executive board may establish several sections where permitted under the chamber of notaries' by-laws. It delegates those matters to the sections which they are to manage independently.

(2) Each section must comprise at least three members of the executive board. The members of each section elect from amongst their midst a person to chair the section and a deputy.

(3) Before the start of each calendar year the executive board determines the number of sections and their members, delegates business to the sections and determines the members of the individual sections. Each member of the executive board may be a member of several sections. These arrangements may be altered in the course of the year only if this becomes necessary on account of a section's heavy workload or as a result of new members joining a section or individual members being unable to carry out their duties on a permanent basis.

(4) The executive board may authorise the sections to hold their meetings somewhere other than the place where the chamber of notaries has its seat.

(5) Within their respective area of competence the sections have the same rights and duties as the executive board.

(6) The executive board decides in lieu of a section if it deems this to be appropriate or if the section or its chair makes an application therefor.

#### **Section 69c** **Early retirement of executive board member**

(1) Where an executive board member is no longer a member of the chamber of notaries or loses his or her eligibility for election for one of the reasons set out in section 69 (4) no. 2, 3 or 5, that board member retires from the executive board.

(2) Where an executive board member has been suspended from the office of notary, his or her membership of the executive board rests for the duration of the suspension.

(3) Further grounds leading to a member's retirement from the executive board or to his or her membership of the executive board resting may be laid down in the chamber of notaries' by-laws.

#### **Section 70** **President**

(1) The president represents the chamber of notaries both in and out of court. As regards the issuing of execution copies and certified copies of documents in the safe custody of the chamber of notaries under the provisions of this Code, the chamber of notaries is also represented by those persons who have been determined to do so by the president by means of a written or electronic order which is to be retained in perpetuity. Only those persons may be determined as representatives in accordance with sentence 2 who have the personal aptitude within the meaning of section 5 (1) and (2) and the professional aptitude within the meaning of section 5 (5) and members of the executive board or employees of the chamber of notaries. In the case referred to in section 51 (1) sentence 4, a person may also be determined as representative if they have the aptitude as referred to in sentence 3 and are a member of the executive board or an employee of another chamber of notaries involved in the joint exercise of safe custody.

(2) The president facilitates the course of business of the chamber of notaries and of the executive board.

(3) The president chairs the meetings of the executive board and of the assembly of the chamber.

(4) Further tasks may be assigned to the president under the by-laws.

### **Section 71**

#### **Assembly of chamber**

- (1) Assemblies of the chamber are convened by its president.
- (2) The president must convene an assembly of the chamber once a year. The president must, further, convene an assembly of the chamber if one tenth of the members make a written application therefor and must indicate the matter which is to be dealt with at the assembly.
- (3) The assembly of the chamber is to be convened at least two weeks in advance by written invitation, indicating the agenda. The day on which the invitation is sent out and the day on which the assembly of the chamber is held are not included when calculating this convening period. In urgent cases the assembly of the chamber may be convened at shorter notice.
- (4) In particular, the assembly of the chamber is responsible for
  1. adopting the chamber of notaries' by-laws pursuant to section 66 (1) sentence 2;
  2. adopting the guidelines pursuant to section 67 (2);
  3. determining the amount and due date of the membership dues, fees and expenses;
  4. approving the funds needed to cover expenses associated with matters of common interest;
  5. auditing the executive board's accounts of the chamber of notaries' receipts and expenditures and the administration of its assets, and approving these accounts.

### **Section 72**

#### **By-laws**

Further details concerning a chamber of notaries' constituent bodies and their competence are laid down in the by-laws.

### **Section 73**

#### **Membership dues**

- (1) A chamber of notaries levies membership dues from the notaries insofar as this is necessary to fulfil its tasks.
- (2) Outstanding membership dues may be collected on the basis of a request for payment issued by the president of the chamber of notaries together with a certificate of enforceability and the official seal of the chamber of notaries pursuant to the provisions applicable to the enforcement of judgments in civil-law disputes.
- (3) Where notaries avail themselves of the chamber of notaries' devices, facilities and activities in relation to the keeping of their records and registers, the chamber of notaries may levy fees therefor from the notaries and require reimbursement of expenses.

### **Section 74**

#### **Right to information, presentation and summons**

- (1) A chamber of notaries may, in the exercise of its powers, require notaries and trainee notaries to provide information, to present records and registers, and to appear in person before its competent constituent bodies. A chamber of notaries is authorised to pass on to the facilities and institutions referred to in section 67 (4) those insights which it gains therefrom insofar as these are needed by the facilities and institutions in the fulfilment of their tasks.
- (2) After issuing a prior written warning, a chamber of notaries may impose a penalty payment – even more than once – in order to prompt a notary or trainee notary to fulfil the official duties laid down in subsection (1). The penalty payment may not exceed 1,000 euros



in each instance. The penalty payment accrues to the chamber of notaries; it is collected in the same way as outstanding membership dues.

#### **Section 75 Admonition**

(1) Chambers of notaries are authorised to admonish those notaries and trainee notaries who have committed a minor breach of official duty. Chambers of notaries are to notify the supervisory authority of having instituted proceedings directed at the issuing of an admonition. If the supervisory authority wishes to take over the proceedings, it is to notify the chamber of notaries thereof. A chamber of notaries' power as per sentence 1 ends upon the institution of proceedings against a notary or trainee notary under section 94 or of disciplinary proceedings. Section 95a (1) sentence 1 applies to limitation.

(2) The notary or trainee notary is to be heard before an admonition is issued.

(3) The admonition must be reasoned. It is to be served on the notary or trainee notary. The supervisory authority is to be sent a copy.

(4) The notary or trainee notary may file a written objection to the admonition with the executive board of the chamber of notaries within one month following service. The executive board decides on the objection; subsection (3) applies accordingly.

(5) If the objection is rejected by the executive board, then the notary or trainee notary may apply to the higher regional court, sitting as the disciplinary court for notaries, for a decision. The application must be made in writing within one month following service of the decision on the objection and must be reasoned. The higher regional court takes a final decision by order. In all other respects, the provisions of the Federal Disciplinary Act (*Bundesdisziplinargesetz*) on disciplinary proceedings before the administrative courts apply accordingly to the court proceedings. Insofar as the costs of the proceedings are imposed on the service employer under these provisions, the chamber of notaries takes the place of the service employer.

(6) An admonition is without prejudice to the supervisory authority's right to institute disciplinary proceedings. If, however, the higher regional court has revoked the admonition because it has found no culpable breach of official duty, then the exercise of disciplinary authority on account of the same conduct is permissible only on the basis of such facts or evidence as were not known to the court when it gave its decision. If a disciplinary measure is imposed against the notary or trainee notary, any previous admonition becomes ineffective.

#### **Division 2 Federal Chamber of Notaries**

##### **Section 76 Formation; seat**

(1) The chambers of notaries together constitute the Federal Chamber of Notaries.

(2) The seat of the Federal Chamber of Notaries is determined in its by-laws.

##### **Section 77 Legal status; supervision; approval of by-laws**

(1) The Federal Chamber of Notaries is a corporation under public law.

(2) The Federal Ministry of Justice and Consumer Protection exercises state supervision over the Federal Chamber of Notaries. Such supervision is limited to ensuring compliance with the law and the by-laws, in particular performance of those tasks which are delegated to the Federal Chamber of Notaries.

(3) The by-laws of the Federal Chamber of Notaries and amendments thereto, which are adopted by the general assembly, require approval by the Federal Ministry of Justice and Consumer Protection.

##### **Section 78 Tasks**

(1) The Federal Chamber of Notaries is required to fulfil the tasks assigned to it by law. In particular, it is to

1. determine the opinions of the individual chambers of notaries in regard to issues which affect the chambers of notaries collectively and establish, by way of joint discussions, the opinion held by the majority;
2. bring the opinion of the Federal Chamber of Notaries to bear vis-à-vis the competent courts and authorities in matters which affect the chambers of notaries collectively;
3. represent the chambers of notaries collectively vis-à-vis authorities and organisations;
4. render expert opinions requested by an authority or federal body involved in the legislative process or by a federal court in matters pertaining to notaries;
5. make recommendations regarding the guidelines to be issued by the chambers of notaries pursuant to section 67 (2) by resolution of the general assembly;
6. draw up guidelines regarding the training of notaries' assistants;
7. keep the Electronic Database of Notarial Records (section 78k);
8. keep the Directory of Notaries (section 78l);
9. set up special electronic notarial mailboxes (section 78n);
10. operate a video communication system enabling the performance of notarial acts via video communication in accordance with sections 16a to 16e and 40a of the Notarial Recording Act (section 78p).

(2) The Federal Chamber of Notaries keeps

1. the Central Register of Lasting Powers of Attorney (section 78a),
2. the Central Register of Wills (section 78c),
3. the Electronic Document Archive (section 78h).

(3) The Federal Chamber of Notaries may fulfil other tasks corresponding to the purpose of its establishment. It may, in particular,

1. take measures which serve the provision of scientific advice to the chambers of notaries and its members, the continuing training of notaries, the training and continuing training of young professionals and notaries' assistants,
2. administrate notarial data and
3. support electronic communication between notaries and the courts, authorities and other third parties, and the keeping of electronic records and other electronic data processing by notaries.

#### **Section 78a**

##### **Central Register of Lasting Powers of Attorney; authorisation to issue statutory instruments**

(1) The Federal Chamber of Notaries, in its capacity as the authority holding the register, keeps an automated electronic register of lasting powers of attorney, care directives, living wills and objections against representation by a spouse in accordance with section 1358 of the Civil Code. The Federal Ministry of Justice and Consumer Protection exercises legal supervision over the authority holding the register.

(2) Details concerning the following may be included in the Central Register of Lasting Powers of Attorney:

1. the donor,
2. the attorneys,
3. the power of attorney and its content,
4. suggestions regarding the choice of carer,
5. wishes regarding the provision of care,
6. the proposer,
7. the person objecting to representation by a spouse in accordance with section 1358 of the Civil Code and
8. the maker of a living will.

(3) The Federal Ministry of Justice and Consumer Protection is to regulate, by way of a statutory instrument requiring the approval of the Bundesrat, further details concerning

1. the establishment and keeping of the Register,
2. the disclosure of information extracted from the Register,
3. the application for, amendment to and deletion of entries in the Register,
4. data transmission and storage and
5. data security.

#### **Section 78b Information and fees**

(1) Upon request, the authority holding the register discloses information extracted from the Central Register of Lasting Powers of Attorney to the courts and to medical doctors. Medical doctors are only permitted to request information insofar as it is necessary in order to be able to bring about a decision on urgent medical treatment. The authority of the courts, notaries and chambers of notaries to inspect entries in the register concerning those documents which they are holding in safe custody or registered remains unaffected.

(2) The Central Register of Lasting Powers of Attorney is financed by fees levied. The authority holding the register may levy fees for the inclusion of declarations in the register. The person making the application and the person liable to pay fees owed by another are obliged to pay these fees. Several persons liable to pay fees are liable as joint and several debtors. The courts and notaries may take receipt of the fees on behalf of the authority holding the register.

(3) The fees are to be calculated in such a manner that they cover the average administrative effort involved in the establishment, taking into operation, ongoing management and use of the Central Register of Lasting Powers of Attorney, including personnel and material costs. Account is thereby also to be taken of the communication channel to be used to submit declarations to be included in the register.

(4) The authority holding the register determines, by way of a fee schedule, the fees referred to in subsection (2) sentence 2 and the manner of their collection. The fee schedule requires approval by the Federal Ministry of Justice and Consumer Protection. The amount of the fees is to be regularly reviewed.

#### **Section 78c Central Register of Wills; authorisation to issue statutory instruments**

(1) The Federal Chamber of Notaries, in its capacity as the authority holding the register, keeps an automated electronic register concerning the safe custody of documents relating to succession and other data pursuant to section 78d. The capture and use of data are limited to that which is necessary in the fulfilment of the statutory tasks of the authority holding the register, the probate courts and depositary institutions. The Federal Ministry of Justice and Consumer Protection exercises legal supervision over the authority holding the register.

(2) The Federal Ministry of Justice and Consumer Protection is to regulate, by way of a statutory instrument requiring the approval of the Bundesrat, further details concerning

1. the establishment and keeping of the Register,
2. the disclosure of information extracted from the Register,
3. the application for, amendment to and deletion of entries in the Register,
4. data transmission and storage and
5. data security.

(3) The statutory instrument may also regulate further details concerning the content of the notification of death referred to in section 78e sentence 1. Further, the statutory instrument may permit exceptions to

1. section 78e sentence 3 insofar as this concerns the notification of a death to the probate court;
2. the electronic notification under section 78e sentence 4;
3. the obligation to transmit information electronically pursuant to section 34a (1) and (2) of the Notarial Recording Act and section 347 of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction.

#### **Section 78d**

##### **Content of Central Register of Wills**

(1) The Central Register of Wills contains that information regarding the safe custody of documents relating to succession which

1. are to be transmitted by notaries pursuant to section 34a (1) or (2) of the Notarial Recording Act or
2. are to be transmitted by courts pursuant to subsection (4) sentence 1 and pursuant to section 347 of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction.

The Central Register of Wills also contains

1. that information regarding safe custody which has been transferred pursuant to section 1 of the Act on the Transfer of Directories of Wills to the Central Register of Wills (*Testamentsverzeichnis-Überprüfungsgesetz*) and
2. those notifications which have been transferred pursuant to section 9 of the Act on the Transfer of Directories of Wills to the Central Register of Wills.

The data stored are to be deleted after the end of the 30th calendar year following the notification of a death.

(2) 'Documents relating to succession' means wills, inheritance contracts and all documents with declarations which might have a bearing on succession, in particular termination agreements, notices of repudiation and contestation of a will, contracts waiving inheritance and bequests, pre-nuptial and pre-registration agreements, and choices of law. 'Information regarding safe custody' means that information which is needed to locate documents relating to succession.

(3) Documents relating to succession can only be registered if they have been

1. publicly recorded or
2. taken into official safe custody.

(4) Where a court settlement concerns a document relating to succession within the meaning of subsection (2) sentence 1, the court without delay transmits the information regarding safe custody to the authority holding the Central Register of Wills in accordance with the provisions of the statutory instrument issued pursuant to section 78c (2) and (3). The testator notifies the court of the data required for registration.

#### **Section 78e Notification of death**

It is for the competent registry office to notify the authority holding the register of the death, the declaration of death or a court's finding of the time of death of a person (notification of death). The authority holding the register thereupon examines whether the Central Register of Wills contains details pursuant to section 78d (1) sentence 1 and 2. Insofar as is necessary in the fulfilment of the tasks of the probate court and of the agencies where documents have been deposited in safe custody, the authority holding the register without delay notifies

1. the competent probate court of the death and any information as referred to in section 78d (1) sentence 1 and 2, and
2. the agencies where documents have been deposited in safe custody of the death and any information regarding safe custody as referred to in section 78d (1) sentence 1 no. 1.

Notification is made in electronic form.

#### **Section 78f Information extracted from Central Register of Wills**

(1) Upon request, the authority holding the register provides

1. courts with information extracted from the Central Register of Wills and
2. notaries with information regarding safe custody extracted from the Central Register of Wills.

Information is only disclosed to the extent that the courts and notaries require it in the fulfilment of their tasks. Whilst the testator is alive, information may be disclosed only with his or her consent.

(1a) Upon request, in matters of legal succession upon death within the area of application of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ L 201, 27.7.2012, p. 107; L 344, 14.12.2012, p. 3; L 41, 12.2.2013, p. 16; L 60, 2.3.2013, p. 140; L 363, 18.12.2014, p. 186) the authority holding the register also

1. provides foreign courts within the meaning of Article 3 (2) of Regulation (EU) No 650/2012 and foreign authorities competent for issuing European Certificates of Succession with information extracted from the Central Register of Wills and
2. provides notaries established in another Member State of the European Union, with the exception of Denmark and Ireland, with information regarding safe custody extracted from the Central Register of Wills.

Subsection (1) sentence 2 and 3 applies accordingly.

(2) The authority of the courts, notaries and chambers of notaries to inspect the entries in the register concerning documents which have been deposited in safe custody with them or which they have registered remains unaffected.

(3) The authority holding the register may support the courts in investigating documents which they are holding in official safe custody but regarding which no entry has been made in the Central Register of Wills owing to there being no note of safe custody. The information regarding safe custody of the dispositions mortis causa determined on the basis of sentence 1 are to be reported to the Central Register of Wills pursuant to section 347 of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction.

### **Section 78g**

#### **Fees levied in respect of Central Register of Wills**

(1) The Central Register of Wills is financed by fees levied. The authority holding the register may levy fees for

1. recording declarations in the Register of Wills and
2. disclosing information extracted from the Register of Wills in accordance with section 78f (1) sentence 1 no. 2 and (1a) sentence 1.

(2) The following are obliged to pay fees:

1. the testator in the case referred to in subsection (1) sentence 2 no. 1,
2. the person occasioning the disclosure of information in the case referred to in subsection (1) sentence 2 no. 2.

Several persons liable to pay fees are liable as joint and several debtors. The courts and notaries may take receipt of the fees on behalf of the authority holding the register.

(3) The fees are to be calculated in such a manner that they cover the average administrative effort involved in the establishment and ongoing management and use of the Central Register of Wills, including personnel and material costs. No account is to be taken of the costs arising on account of including notifications made in accordance with section 78d (1) sentence 2 no. 2.

(4) The authority holding the register determines, by way of a fee schedule, the fees referred to in subsection (1) sentence 2 and the manner of their collection. The fee schedule requires approval by the Federal Ministry of Justice and Consumer Protection. The amount of the fees is to be regularly reviewed.

### **Section 78h**

#### **Electronic Document Archive; authorisation to issue statutory instruments**

(1) The Federal Chamber of Notaries, in its capacity as the authority holding the document archive, maintains a central electronic archive which enables notaries to keep an electronic collection of documents, a register of documents and a register of safe custody (Electronic Document Archive). The Federal Ministry of Justice and Consumer Protection exercises legal supervision over the authority holding the document archive.

(2) The availability, integrity, authenticity, confidentiality and transparency of data in the register of documents, the register of safe custody and of the documents kept electronically in the Electronic Document Archive must be guaranteed for the entire duration of the retention period. The authority holding the document archive takes the technical and organisational measures which are necessary to guarantee in perpetuity that the electronic documents in safe custody retain their probative value without the need for the agency holding them to apply another signature.

(3) Electronic documents which are stored together in the Electronic Document Archive must be linked in such a manner that they can only be called up together. Section 42 (3) and section 49 (5) of the Notarial Recording Act remain unaffected.

(4) The Federal Ministry of Justice and Consumer Protection is to regulate, by way of a statutory instrument not requiring the approval of the Bundesrat, further details concerning



1. the establishment of the Electronic Document Archive,
2. the keeping and technical operation of the Electronic Document Archive,
3. data transmission and storage,
4. data security and
5. the granting and withdrawal of technical administrative and access authorisations.

#### **Section 78i**

##### **Access to Electronic Document Archive**

Access to the register of documents, to the register of safe custody and to electronic documents kept in the Electronic Document Archive is reserved to the agency responsible for their safe custody. The authority holding the document archive takes suitable technical and organisational measures in this regard.

#### **Section 78j**

##### **Fees levied in respect of Electronic Document Archive**

(1) The Electronic Document Archive is financed by fees levied. The authority holding the document archive may levy fees for

1. adding electronic documents to the electronic collection of documents and
2. keeping the register of safe custody.

(2) The following are obliged to pay the fees:

1. the person obliged to pay the costs of the respective notarial act in the case referred to in subsection (1) sentence 2 no. 1, in derogation thereof
  - a) the Public Treasury in the case referred to in section 119 (1),
  - b) the notary in the case referred to in section 119 (3),
  - c) the chamber of notaries in the case referred to in section 119 (4),
2. the notary in the case referred to in subsection (1) sentence 2 no. 2.

Several persons liable to pay fees are liable as joint and several debtors. Notaries may take receipt of the fees on behalf of the authority holding the document archive.

(3) The fees are to be calculated in such a manner that they cover the average administrative effort involved in the establishment, taking into operation, ongoing management and use of the Electronic Document Archive, including personnel and material costs. When calculating the fees for adding electronic documents to the electronic collection of documents, account may be taken of the size of the electronic document. A smaller fee may be levied for certifying signatures which do not necessitate the writing of a draft.

(4) The authority holding the document archive determines, by way of a fee schedule, the fees referred to in subsection (1) sentence 2 and the manner of their collection. The schedule requires approval by the Federal Ministry of Justice and Consumer Protection. The amount of the fees is to be regularly reviewed.

#### **Section 78k**

##### **Electronic Database of Notarial Records; authorisation to issue statutory instruments**

(1) The Federal Chamber of Notaries maintains a central electronic database of records which enables notaries to keep, in electronic form, those records and registers which they are not required to deposit in the Electronic Document Archive and to store other data (Electronic Database of Notarial Records).

(2) The Electronic Database of Notarial Records is financed by fees levied. The Federal Chamber of Notaries may levy fees for the keeping of records and registers in electronic

form and for the storing of other data in the Electronic Database of Notarial Records. The person obliged to pay the fees is the notary.

(3) The fees are to be calculated in such a manner that they cover the average administrative effort involved in the establishment, taking into operation, and ongoing management and use of the Electronic Database of Notarial Records, including personnel and material costs.

(4) The Federal Chamber of Notaries determines, by way of a fee schedule, the fees referred to in subsection (2) sentence 2 and the manner of their collection. The schedule requires approval by the Federal Ministry of Justice and Consumer Protection. The amount of the fees is to be regularly reviewed.

(5) The Federal Ministry of Justice and Consumer Protection is to regulate, by way of a statutory instrument not requiring the approval of the Bundesrat, further details concerning

1. the establishment of the Electronic Database of Notarial Records,
2. the keeping and technical operation of the Electronic Database of Notarial Records,
3. data transmission and storage,
4. data security and
5. the granting and withdrawal of technical administrative and access authorisations.

### **Section 78I Directory of Notaries**

(1) The Federal Chamber of Notaries keeps an electronic directory of notaries and of administrators for a notary (Directory of Notaries). Each chamber of notaries enters into the Directory of Notaries data on its member notaries and administrators for a notary appointed in its district.

(2) The Directory of Notaries serves the provision of information to the authorities and the courts, consumers of legal services and other persons involved in legal dealings concerning appointed notaries and administrators for a notary and who is responsible for the safe custody of notarial records and registers. It further serves the fulfilment of the tasks incumbent upon the chambers of notaries and the Federal Chamber of Notaries. Anyone may inspect the Directory free of charge. Searches of the Directory are made possible by means of an electronic search system.

(3) The following are to be entered in the Directory of Notaries:

1. facts notified by the *Land* departments of justice pursuant to section 67 (6) nos. 1 to 5, including the relevant date,
2. the family name, given name(s) and former family names which the notary or administrator for a notary has used since his or her appointment,
3. the name of the person responsible for the safe custody of records, with the exception of those referred to in section 45 (1),
4. the location of office, addresses of offices, and the addresses and dates relating to office hours which are held elsewhere,
5. membership of a chamber of notaries,
6. designation of the special electronic notarial mailbox,
7. telecommunications data as notified by the notary or administrator for a notary,

8. language skills, insofar as the notary or administrator for a notary has provided such information.

The information referred to in sentence 1 nos. 1 to 5 is to be entered by the respective chamber of notaries, that referred to in sentence 1 nos. 6 to 8 by the Federal Chamber of Notaries. Entries concerning deputy notaries may also be made directly by the supervisory authority. The chambers of notaries, the Federal Chamber of Notaries and the supervisory authority each bear responsibility for those data which they enter in the Directory.

(4) The data to be collected in regard to lawyers commissioned as notary may also be called up by automated procedure from the Central Register kept by the Federal Bar Association (section 31 of the Federal Code for Lawyers). The same applies where a lawyer has been appointed as administrator for a notary or deputy notary.

(5) The Directory of Notaries may also contain entries on former notaries, administrators for notaries and other comparable public officials. Responsibility for entries on former public officials lies with the chambers of notaries which were competent for entries pursuant to subsection (1) sentence 2 at the time when the former public officials performed their functions. Entries on former public officials are only to include that information which is necessary to locate those documents which they recorded.

(6) Entries in the Directory of Notaries are to be deleted when they are no longer needed to accomplish the purposes referred to in subsection (2) sentence 1 and 2.

#### **Section 78m**

##### **Authorisation to issue statutory instruments regarding Directory of Notaries**

(1) The Federal Ministry of Justice and Consumer Protection regulates, by way of a statutory instrument requiring the approval of the Bundesrat, details concerning the collection of data for inclusion in the Directory of Notaries, the keeping of the Directory of Notaries and inspection of the Directory of Notaries. Unless the statutory instrument provides otherwise, the admissibility of establishing joint procedures pursuant to section 11 of the E-Government Act (*E-Government-Gesetz*) remains unaffected.

(2) The statutory instrument may provide or permit that further details which serve the purposes referred to in section 78l (2) sentence 1 and 2 and the appointment of a deputy notary and his or her activities may also be stored. Where this is the case, the statutory instrument must define the intended purpose. In particular, the right of inspection may be restricted or ruled out.

#### **Section 78n**

##### **Special electronic notarial mailbox; authorisation to issue statutory instruments**

(1) The Federal Chamber of Notaries is to set up a personal electronic mailbox for each notary listed in the Directory of Notaries (special electronic notarial mailbox).

(2) The Federal Chamber of Notaries is to ensure that access to the special electronic notarial mailbox is only possible via a secure procedure which includes two separate layers of security. The Federal Chamber of Notaries may provide different access authorisations for notaries and other persons. It is authorised to delete messages stored in the special electronic notarial mailbox after an appropriate period. The special electronic notarial mailbox is, as a rule, to be accessible.

(3) Where an entry is made in the Directory of Notaries of the expiry of a notary's office or of his or her suspension from office, the Federal Chamber of Notaries revokes his or her access authorisation to the special electronic notarial mailbox. It deletes the special electronic notarial mailbox as soon as it is no longer required.

(4) Subsections (1) to (3) apply accordingly to administrators for a notary.

(5) The Federal Chamber of Notaries may also set up special electronic notarial mailboxes for deputy notaries, trainee notaries, themselves, the chambers of notaries and other notarial facilities. Subsection (2) sentence 1, 3 and 4 applies.

(6) The person to whom a special electronic notarial mailbox is assigned is obliged to have at his or her disposal the technical equipment needed to use the mailbox, and to take note of services effected and messages received via the special electronic notarial mailbox.

(7) The Federal Ministry of Justice and Consumer Protection regulates, by way of a statutory instrument requiring the approval of the Bundesrat, further details concerning the special electronic notarial mailboxes, in particular details concerning

1. the establishment of the special electronic notarial mailboxes and data which need to be transmitted to that end,
2. the technical features, including accessibility, of the special electronic notarial mailboxes,
3. the keeping of the special electronic notarial mailboxes,
4. access authorisation and use of the special electronic notarial mailboxes,
5. the deletion of messages and
6. the deletion of special electronic notarial mailboxes.

#### **Section 78o Complaint**

(1) Unless otherwise provided under the following subsections, a complaint may be filed under the provisions of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction against the decisions of the authority holding the register referred to in sections 78a to 78g and of the authority holding the document archive referred to in section 78j, even if these are taken on the basis of a statutory instrument or fee schedule referred to in the aforementioned provisions and regardless of the value of the complaint.

(2) The complaint must be filed with the authority which took the decision. The authority holding the register may remedy the complaint. It submits any complaints it does not remedy to the regional court at the seat of the Federal Chamber of Notaries for a decision.

(3) An appeal is not admissible.

#### **Section 78p Video communication system for notarial acts; authorisation to issue statutory instruments**

(1) The Federal Chamber of Notaries operates a video communication system which enables notaries to perform notarial acts via video communication in accordance with sections 16a to 16e and 40a of the Notarial Recording Act.

(2) In particular, operation of the video communication system also encompasses

1. the technical realisation of video communication between notaries and the parties involved,
2. the technical implementation of an electronic proof of identity in accordance with section 16c sentence 1 of the Notarial Recording Act,
3. the readout of an electronic storage and processing medium in accordance with section 16c sentence 2 of the Notarial Recording Act and
4. the creation of a qualified electronic signature and appending of the same to an electronic document.

The video communication system may encompass other functions which serve the initiation, preparation, performance or execution of notarial acts.

(3) The Federal Ministry of Justice,\* in agreement with the Federal Ministry of the Interior and Community, is to regulate, by way of a statutory instrument not requiring the approval of the Bundesrat, further details concerning

1. the establishment of the video communication system,
2. the technical operation of the video communication system,
3. the data processing necessary to enable the proper functioning of the video communication system,
4. data security and
5. the issuing and withdrawal of technical access authorisations.

\* Translator's note: This is not a translation error. The inconsistency in the Ministry's designation does not affect its assigned competence and will be corrected at a future date.

#### **Section 78q**

##### **Levying of fees for video communication system**

(1) The video communication system is financed by way of fees which notaries are obliged to pay. The fees are to be calculated in such a manner that they cover the administrative effort involved in the establishment and operation of the video communication system, including personnel and material costs.

(2) The Federal Chamber of Notaries determines the fees referred to in subsection (1) and the manner in which they are to be levied by way of a fee schedule. The fee schedule requires approval by the Federal Ministry of Justice and Consumer Protection. The amount of the fees is to be regularly reviewed.

#### **Section 79**

##### **Constituent bodies**

The constituent bodies of the Federal Chamber of Notaries are the Presiding Board and the general assembly).

#### **Section 80**

##### **Presiding Board**

The Presiding Board of the Federal Chamber of Notaries comprises the President and eight further members. Five members of the Presiding Board must be full-time notaries, and four must be lawyers commissioned as notary. One full-time notary and one lawyer commissioned as notary act as the President's deputy.

#### **Section 81**

##### **Election of Presiding Board**

(1) The Presiding Board is elected by the general assembly. The presidents of the chambers of notaries and the members of their chambers of notaries proposed by them are eligible to stand for election. Section 69c applies accordingly, with the proviso that the by-laws of the Federal Chamber of Notaries take the place of those of the chamber of notaries.

(2) The members of the Presiding Board are elected for a four-year term of office. Where a member retires from office prematurely, a new member is to be elected at the next general assembly for the remainder of that member's term of office.

#### **Section 81a**

##### **Obligation of confidentiality; availment of services**

(1) Section 69a (1) and (2) applies accordingly to the obligation of confidentiality of the members of the Presiding Board and of the employees of the Federal Chamber of Notaries and to those persons whose services are enlisted by the Federal Chamber of Notaries or by the members of its Presiding Board.

(2) Section 26a (1) to (3), (6) and (7) applies analogously where the Federal Chamber of Notaries enlists the services of others in relation to matters which are subject to the obligation of confidentiality of a notary under section 18.

#### **Section 82**

##### **Tasks of President and Presiding Board**

- (1) The President represents the Federal Chamber of Notaries in and out of court.
- (2) The President chairs the meetings of the Presiding Board.
- (3) The Presiding Board each year submits to the Federal Ministry of Justice and Consumer Protection a report on the activities of the Federal Chamber of Notaries and of the Presiding Board. Further, it notifies the Federal Ministry of the result of the elections to the Presiding Board.

### **Section 83** **General assembly**

- (1) The Federal Chamber of Notaries regularly adopts its resolutions at general assemblies.
- (2) The tasks assigned to the Federal Chamber of Notaries in section 78 (1) no. 4 are carried out by the Presiding Board after it has heard the general assembly. In urgent cases the hearing may be waived; members are, however, to be notified without delay of any measures taken.

### **Section 84** **(repealed)**

### **Section 85** **Convocation of general assembly**

- (1) General assemblies are convened in writing by the President. The President chairs the general assemblies. A general assembly must be convened if the Presiding Board or at least three chambers of notaries apply in writing for its convocation indicating the subject matter to be addressed.
- (2) The subject matter regarding which a resolution is to be adopted is to be stated when convening the general assembly. A resolution on a subject matter which was not notified within the periods laid down in the by-laws as regards convocation may only be adopted with the consent of all the chambers of notaries.
- (3) Resolutions of the general assembly may also be adopted without the need for an in-person assembly, unless more than three chambers of notaries object. Votes are to be taken in writing.

### **Section 86** **Composition and adoption of resolution by general assembly**

- (1) Chambers of notaries are represented at general assemblies by their respective presidents or another member of their chamber. Section 69 (4) and (5) applies analogously to another member. Others who are entitled to participate are the members of the Presiding Board of the Federal Chamber of Notaries and persons specifically authorised to participate by the President of the Federal Chamber of Notaries.
- (2) The votes cast by the chambers of notaries at general assemblies are weighted as follows based on the number of inhabitants of the district for which they have been established:

1. up to three million inhabitants: single weighting,
2. up to six million inhabitants: double weighting,
3. up to nine million inhabitants: triple weighting,
4. more than nine million inhabitants: quadruple weighting.

The number of inhabitants is determined for one calendar year at a time based on the latest figures published by the Federal Statistical Office before the start of the year.

- (3) Resolutions are adopted at general assemblies with a simple majority of votes cast, unless otherwise provided under this Code or the by-laws of the Federal Chamber of Notaries. In the event of a tied vote, the chair has the casting vote; in the case of elections there is to be a drawing of lots.



(4) Resolutions are not implemented where a majority of at least three quarters either of the votes available to full-time notaries or of the votes available to lawyers commissioned as notary are against it.

#### **Section 87** **Presiding Board's report**

The Presiding Board is to report to the general assembly on all important matters.

#### **Section 88** **Members' status**

The members of the Presiding Board and of the general assembly act in an honorary capacity. However, they may receive appropriate compensation for their activities and reimbursement of their necessary expenses.

#### **Section 89** **By-laws**

Further details concerning the constituent bodies of the Federal Chamber of Notaries and its powers are laid down in its by-laws. The by-laws and amendments thereto are to be published in the official gazette of the Federal Chamber of Notaries.

#### **Section 90** **Right to information**

The Federal Chamber of Notaries is authorised to request reports and expert opinions from the chambers of notaries in the fulfilment of the tasks assigned to it under this Code or its by-laws.

#### **Section 91** **Levying of membership dues**

- (1) The Federal Chamber of Notaries levies those membership dues from the chambers of notaries which are required to cover its personnel and material needs.
- (2) The amount of the membership dues is set by the general assembly.

### **Part 3** **Supervision; disciplinary proceedings; court proceedings in administrative matters pertaining to notaries**

#### **Division 1** **Supervision**

#### **Section 92** **Supervisory authorities**

- (1) The right of supervision lies with
  1. the president of the regional court in respect of notaries and trainee notaries in that regional court district;
  2. the president of the higher regional court in respect of notaries and trainee notaries in that higher regional court district;
  3. the *Land* department of justice in respect of all notaries and trainee notaries in that *Land*.
- (2) Unless otherwise provided by law, the *Land* department of justice determines the supervisory authorities' respective competence.
- (3) A statutory instrument as referred to in section 60 (2) of the Courts Constitution Act (*Gerichtsverfassungsgesetz*) may also make provision for the right of supervision in respect of notaries and trainee notaries to be assigned to the president of a *Land* court for the districts of several *Land* courts. Assignment in accordance with sentence 1 also includes the

competences set out in section 13 (3) sentence 1, section 40 (2) sentence 1, section 51 (2) and section 51a (1) sentence 2.

### **Section 93** **Supervisory authorities' powers**

- (1) It is incumbent upon the supervisory authorities to regularly audit and monitor the performance of official functions of notaries and the service of trainee notaries. Additional interim audits and random checks are permissible without special reason. In the case of a newly appointed notary, the first audit is carried out within two years of his or her taking up office.
- (2) The subject matter of the audit is the proper performance of the official functions of a notary. The audit also covers the office premises, the keeping and safe custody of records and registers, the proper automated processing of personal data, the proper holding in safe custody of valuables, the notification in good time of when deputies are appointed, and the existence of professional indemnity insurance. In any case, a large number of documents and ancillary records are to be examined and cost calculations audited.
- (3) Competence for carrying out the audit is governed by the provisions enacted in that regard by the *Land* department of justice. After having heard the chamber of notaries, the supervisory authority may enlist the services of notaries to assist in conducting the audits. The services of public officials in the judicial administration may also be enlisted to examine and audit the registers and to examine the cost calculations and invoicing of fees, including their collection, and items deposited in safe custody and the like; these public officials have no power of oversight. Where a notary's cost calculation and cost collection is already being audited by the Notaries' Fund or the Notaries' Fund for the Five Eastern Länder, no audit is necessary.
- (4) Notaries are obliged to grant the supervisory authority or the person commissioned by it to conduct the audit inspection of the records and registers and of any documents deposited in their safe custody and to hand these over. Notaries are, further, required to grant them access to those devices used to automatically process personal data and to provide them with the information necessary for supervisory purposes. Section 78i remains unaffected. Persons with whom a notary has or had a joint practice or with whom a notary shares or shared business premises are obliged to provide the supervisory authority with information and to present records and registers insofar as this is necessary to verify compliance with the prohibitions of participation. The same applies to third parties with whom a notary has or had a joint practice within the meaning of section 27 (1) sentence 2.

### **Section 94** **Disapproval**

- (1) The supervisory authorities are authorised to express their disapproval of those notaries and trainee notaries who have committed a minor breach of official duty. Section 95 (1) sentence 1 applies to limitation.
- (2) Section 75 (2) and (3) sentence 1 and 2 applies accordingly. The chamber of notaries is to be sent a copy of the disapproval.
- (3) Notaries and trainee notaries may file a complaint, in writing and within one month following service, against such expression of disapproval with the supervisory authority. The supervisory authority may remedy the complaint. If it does not do so, the next highest supervisory authority decides on the complaint. The decision must be reasoned and served on the notary or trainee notary.
- (4) If the complaint is rejected, the notary or trainee notary may apply to the higher regional court, in its capacity as the disciplinary court for notaries, for a decision. Section 75 (5) sentence 2 to 4 applies accordingly.
- (5) The expression of disapproval is without prejudice to the supervisory authority's right to institute disciplinary proceedings. Section 75 (6) sentence 2 and 3 applies accordingly.

## **Division 2**

### **Disciplinary proceedings**

#### **Section 95**

##### **Institution of disciplinary proceedings**

If there are sufficient factual indications that a notary or trainee notary has culpably breached his or her official duties and that breach is not only minor in nature, the supervisory authority is to institute disciplinary proceedings against that notary or trainee notary on account of the disciplinary offence.

#### **Section 95a**

##### **Limitation**

(1) Prosecution of a disciplinary offence is time-barred after five years. In derogation therefrom,

1. the limitation period is 10 years if the disciplinary offence justifies a measure as referred to in section 97 (2) sentence 1 or (3) sentence 1,
2. no limitation period applies where the disciplinary offence justifies a measure as referred to in section 97 (1) no. 3.

(2) Limitation is suspended for the duration of

1. opposition proceedings,
2. court disciplinary proceedings,
3. the suspension of disciplinary proceedings under section 22 of the Federal Disciplinary Act,
4. criminal proceedings instituted on the basis of the same conduct and
5. professional supervision proceedings instituted on the basis of the same conduct.

(3) Limitation is interrupted by

1. the institution of disciplinary proceedings,
2. the filing of a disciplinary action and
3. the filing of an additional disciplinary action.

#### **Section 96**

##### **Applicability of Federal Disciplinary Act; authorisation to issue statutory instruments**

(1) Unless otherwise provided under this Code, the provisions of the Federal Disciplinary Act in the version applicable on 31 March 2024 apply accordingly. The tasks and powers assigned to superior officials under these provisions are exercised by the supervisory authorities, and the tasks and powers of the highest service authority by the *Land* department of justice.

(2) A person who is qualified to hold judicial office is to be commissioned with carrying out the investigations. The court may request judicial assistance from the local court under section 25 (2) of the Federal Disciplinary Act when it comes to carrying out an examination by the court.

(3) The provisions of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*) on the participation of honorary judges which are applicable under section 3 of the Federal Disciplinary Act do not apply. The time limits set out in section 3 of the Federal Disciplinary Act read in conjunction with section 116 (2) and section 117 (4) of the Code of Administrative Court Procedure are five weeks in each case.

(4) Provision may be made under *Land* law to the effect that section 41 (1) sentence 1 of the Federal Disciplinary Act does not apply. The *Land* governments are authorised to delegate the tasks and powers referred to in subsection (1) sentence 2 by way of a statutory instrument to the authorities subordinate to the *Land* department of justice. The *Land* governments may, by way of a statutory instrument, delegate this authorisation to the *Land* departments of justice.

(5) The provisions of Title 17 of the Courts Constitution Act apply to legal redress for excessive length of court proceedings. The provisions of this Code concerning appointments to the higher regional court and to the Federal Court of Justice in disciplinary proceedings against notaries do not apply.

(6) In disciplinary proceedings conducted against a notary, the court is to notify the chamber of notaries of which that notary is a member of the date of the hearing. Representatives of the chamber of notaries who are subject to the obligation of confidentiality under section 69a (1) are, as a rule, to be permitted to participate in a non-public hearing.

### **Section 97**

#### **Disciplinary measures**

(1) The following measures may be imposed in disciplinary proceedings:

1. a written reprimand (*Verweis*),
2. a fine,
3. dismissal.

A written reprimand and fine may be imposed in parallel.

(2) Full-time notaries may also be dismissed from their previous location of office by way of a disciplinary measure. In such a case, the *Land* department of justice is to assign the notary to another location of office without delay after the decision becomes final and after having heard the chamber of notaries. A fine may also be imposed in addition to dismissal from the previous location of office.

(3) Lawyers commissioned as notary may also be dismissed for a definite period by way of a disciplinary measure. In such a case, re-appointment may be refused only if the lawyer commissioned as notary is found guilty, in the meantime, of conduct which makes him or her appear unworthy of once more exercising the office of notary.

(4) A fine of up to 50,000 euros may be imposed against notaries and a fine of up to 5,000 euros against trainee notaries. If the act occasioning the fine was committed out of avarice, the fine may amount to up to double the advantage gained.

(5) In the case of a lawyer commissioned as notary, dismissal under subsection (1) sentence 1 no. 3 also has the consequence of disbarment from the legal profession.

### **Section 98**

#### **Imposition of disciplinary measures**

A written reprimand and a fine may be imposed by disciplinary order issued by the supervisory authority. Where the penalty is to be dismissal, dismissal from the previous location of office or dismissal for a definite period, a disciplinary action is to be brought against the notary. Section 14 (1) no. 2 of the Federal Disciplinary Act applies accordingly to dismissal from the previous location of office and dismissal for a definite period.

### **Section 99**

#### **Disciplinary court**

The disciplinary court of first instance for notaries is the higher regional court, and the disciplinary court of second instance is the Federal Court of Justice.

### **Section 100**

#### **Delegating tasks of disciplinary court by statutory instrument**

Where several higher regional courts have been established in one *Land*, the *Land* government may, by way of a statutory instrument, issue deviating rules concerning the local jurisdiction of the higher regional courts relating to the tasks assigned to them in their capacity as disciplinary court or delegate these tasks to the highest regional court. The *Land* governments may delegate these authorisations by way of a statutory instrument to their *Land* departments of justice.

### **Section 101**

#### **Composition of higher regional court**

In disciplinary proceedings against notaries the higher regional court sits in a composition of a presiding judge, one associate judge who is a permanently appointed judge in an established post and one associate judge who is a notary.

### **Section 102**

#### **Appointment of judges**

The presiding judge, who must at least be a presiding judge at the higher regional court, his or her deputies, the associate judges and their deputies are appointed for a five-year term of office by the president of the higher regional court from amongst the permanent members of the higher regional court. In all other respects, the provisions of Title 2 of the Courts Constitution Act apply accordingly.

### **Section 103**

#### **Appointment of associate judges who are notaries**

(1) Associate judges who are notaries are appointed by the *Land* department of justice. They must be appointed as notaries within the jurisdiction of the disciplinary court. They are chosen from the list of proposed candidates which the executive board of the relevant chamber of notaries submits to the *Land* department of justice. The *Land* department of justice determines how many associate judges are necessary; it is to first hear the executive board of the chamber of notaries. The list of proposed candidates drawn up by the executive board of the chamber of notaries must contain at least one and a half times the required number of notaries. Where a higher regional court covers several districts of chambers of notaries or parts of such districts, the *Land* department of justice allocates the number of associate judges to the districts of the individual chambers of notaries.

(2) An associate judge may not simultaneously be

1. president of one of the Funds (section 113 (3)) or a member of the executive board of a chamber of notaries, of the administrative board of one of the Funds or of the Presiding Board of the Federal Chamber of Notaries;
2. employed by a chamber of notaries, one of the Funds or the Federal Chamber of Notaries as his or her main or secondary occupation;
3. a member of another disciplinary court (section 99).

(3) Only a notary who has been in office for at least five years may be appointed as associate judge.

(4) Notaries whose eligibility for election to a chamber of notaries' executive board is ruled out under section 69 (4) may not be appointed as associated judge.

(5) Associate judges are appointed for a five-year term of office; they may be re-appointed after the end of their term of office. Where an associate judge retires from office prematurely, a successor is appointed for the remainder of that associate judge's term of office.

### **Section 104**

#### **Rights and duties of associate judges who are notaries**

(1) Associate judges who are notaries have all the rights and duties of a professional judge for the duration of their office as associate judge. They exercise their office in an honorary capacity. They receive compensation from the Public Treasury for expenses incurred in

connection with their activities which amounts to one and a half times the highest amount quoted in No. 32008 of the Cost Schedule annexed to the Court and Notary Fees Act. Further, they are entitled to reimbursement of their travel and accommodation expenses in accordance with Nos. 32006, 32007 and 32009 of the Cost Schedule annexed to the Court and Notary Fees Act.

(1a) The office of associate judge ends as soon as the office of notary expires or where a circumstance subsequently arises which precludes appointment pursuant to section 103 (2) and the associate judge consents in each case. The associate judge, the Fund and the chamber of notaries are required to notify the *Land* department of justice and the higher regional court without delay of the circumstances referred to in sentence 1. It is for the first civil division of the higher regional court which is competent as disciplinary court to give a decision to terminate the office pursuant to sentence 1 upon application of the *Land* department of justice if the member concerned has not consented thereto; subsection (2) sentence 3 and 5 applies accordingly.

(2) An associate judge is to be relieved of the office upon application of the *Land* department of justice if

1. it subsequently becomes known that the associate judge should not have been appointed;
2. a circumstance subsequently arises which precludes the appointment;
3. the associate judge commits a gross breach of official duty.

The application is considered by the first civil division of the higher regional court or of the highest regional court which is competent as disciplinary court. The members of the disciplinary court (section 102) may not be involved in the decision-making. Before the decision is taken the notary and the executive board of the chamber of notaries are to be heard. The decision is final.

(3) The *Land* department of justice may discharge an associate judge from office upon that judge's application if he or she is prevented, for health reasons, from continuing to hold office for a not unforeseeable period of time or the member cannot for substantial personal reasons reasonably be expected to continue to hold office.

### **Section 105**

#### **Appeal against higher regional court's decisions**

The provisions of the Federal Disciplinary Act in the version applicable on 31 March 2024 concerning an appeal against the decisions of the administrative court apply accordingly to the appeal against the decisions of the higher regional court.

### **Section 106**

#### **Composition of Federal Court of Justice**

In disciplinary proceedings against notaries the Federal Court of Justice sits in a composition of a presiding judge, two judges and two notaries as associate judges.

### **Section 107**

#### **Appointment of judges**

The presiding judge, who must at least be a presiding judge at the Federal Court of Justice, his or her deputies, and the associate judges and their deputies are appointed for a five-year term of office by the Presiding Board of the Federal Chamber of Notaries from amongst the permanent members of the Federal Court of Justice. In all other respects, the provisions of Title 2 of the Courts Constitution Act apply accordingly.

### **Section 108**

#### **Appointment of associate judges who are notaries**

(1) Associate judges who are notaries are appointed by the Federal Ministry of Justice and Consumer Protection. They are chosen from the list of proposed candidates which the



Presiding Committee of the Federal Court of Justice submits to the Federal Ministry of Justice and Consumer Protection based on proposals made by the chambers of notaries. The Federal Ministry of Justice and Consumer Protection determines how many associate judges are necessary; it is to first hear the Presiding Board of the Federal Chamber of Notaries. The list of proposed candidates must contain the names of at least twice as many notaries as are required, half of whom must exercise the notarial office as a main occupation and half of whom must be trainee notaries.

(2) Section 103 (2) to (5) and section 104 (1) sentence 2 to 4 and (1a) to (3) apply accordingly, with the proviso that the Federal Ministry of Justice and Consumer Protection takes the place of the *Land* department of justice and the Presiding Board of the Federal Chamber of Notaries is also to be heard before a decision is taken to relieve an associate judge of his or her office.

(3) Notaries are honorary judges. During those sessions which they are called to participate in they have the status of professional judges.

(4) Notaries are bound to maintain confidentiality regarding those matters which become known to them in their capacity as associate judge. Section 69a (1) sentence 1 and 2 and (2) applies accordingly. Permission to testify is granted by the President of the Federal Court of Justice.

(5) Notaries appointed as associate judges are to be called to participate in individual sessions in the order in which they appear in a list which the Chair of the Panel draws up before the beginning of each business year after having heard the two eldest notaries appointed as associate judges.

#### **Section 109**

##### **Applicable procedural provisions**

The provisions of the Federal Disciplinary Act in the version applicable on 31 March 2024 as regards disciplinary proceedings before the higher administrative court apply accordingly to proceedings before the Federal Court of Justice in disciplinary proceedings against notaries.

#### **Section 110**

##### **Relationship between disciplinary proceedings and professional supervision proceedings under other laws governing professions**

(1) In the case of a breach of official duties committed by a lawyer commissioned as notary which simultaneously constitutes a breach of duties of another profession to whose professional supervision that lawyer commissioned as notary is subject, a decision is first given in disciplinary proceedings if the breach of official duties is predominantly linked to the exercise of the office of notary. If no main focus of the breach of official duties is discernible or there is no link between the breach of official duties and the exercise of a profession, then a decision is first to be given in the disciplinary proceedings if the lawyer commissioned as notary is principally engaged in the activities of a notary.

(2) Where the lawyer commissioned as notary's removal from office is considered a possibility, a decision may always be given in the context of disciplinary proceedings.

(3) The subject matter of the decision given in the disciplinary proceedings is always only the breach of official duties incumbent upon the lawyer commissioned as notary.

(4) If no decision is first to be given in disciplinary proceedings in accordance with subsection (1), then such disciplinary proceedings are only to be conducted following the conclusion of those proceedings which are to be conducted first if it appears necessary, in addition, to induce the lawyer commissioned as notary to fulfil his or her official duties. The necessity for a measure in accordance with section 97 (1) no. 3, (2) sentence 1 or (3) sentence 1 remains unaffected by the imposition of another penalty.

#### **Section 110a**

##### **Deletion**

(1) Entries made in the files kept on a notary relating to the measures and decisions referred to in sentences 4 and 5 are to be deleted following expiry of the time limits set out therein.

The case records resulting from these measures and decisions are to be deleted from the files and destroyed. Sentences 1 and 2 apply analogously if the files on the notary are kept in electronic form. The time limits are

1. five years in the case of
  - a) admonitions issued by the chamber of notaries,
  - b) disapprovals expressed by the supervisory authority,
  - c) decisions given in proceedings concerning a breach of official duties under this Code which have not resulted in imposition of a disciplinary measure, the issuance of an admonition or expression of disapproval,
  - d) decisions and measures not encompassed by sentence 5 in proceedings concerning criminal offences or regulatory offences or professional supervision proceedings relating to other professions;
2. 10 years in the case of written reprimands and fines, even if they are imposed in parallel;
3. 20 years in the case of removal from the previous location of office, dismissal from office for a definite period and dismissal from office which was followed by re-appointment of the notary.

The periods applicable to the deletion of the relevant measure apply accordingly to measures which were imposed in proceedings concerning criminal offences or regulatory offences or in professional supervision proceedings relating to other professions and in regard to which the underlying conduct simultaneously breached the official duties of a notary.

(2) The period begins to run on that day on which the measure or decision became incontestable. In the event of re-appointment following dismissal from office pursuant to section 97 (1) no. 3, the period begins to run upon such appointment. Following expiry of the time limit, the removal and deletion in accordance with subsection (1) sentence 2 may be delayed until the end of the calendar year.

(3) With the exception of the cases under subsection (1) sentence 4 no. 1 (c) and (d), the period does not end as long as

1. another entry concerning a criminal conviction, regulatory offence or professional supervisory measure may be taken into consideration,
2. proceedings are pending which may result in an entry as referred to in no. 1 or
3. a fine imposed in disciplinary proceedings has not yet been enforced.

(4) Following expiry of the time limit, the notary is regarded as unencumbered by the measures or decisions referred to in subsection (1).

### **Division 3** **Court proceedings in administrative matters pertaining to notaries**

#### **Section 111** **Competence**

(1) Higher regional courts rule at first instance on public-law disputes under this Code, under a statutory instrument issued on the basis of this Code or under the by-laws of one of the chambers of notaries established under this Code, including the Federal Chamber of Notaries, unless the disputes are of a disciplinary nature or are expressly assigned to another court (administrative matters pertaining to notaries).

(2) The Federal Court of Justice rules on

1. an appeal on points of fact and law (*Berufung*) lodged against a judgment handed down by a higher regional court,
  2. a complaint lodged under section 17a (4) sentence 4 of the Courts Constitution Act.
- (3) The Federal Court of Justice rules at first and last instance on
1. actions relating to decisions taken by the Federal Ministry of Justice and Consumer Protection or for which the Federal Ministry of Justice and Consumer Protection is responsible,
  2. the invalidity of the elections of and resolutions adopted by the Federal Chamber of Notaries.
- (4) The higher regional courts and the Federal Court of Justice rule sitting in the composition prescribed for disciplinary proceedings against notaries.

#### **Section 111a**

##### **Local jurisdiction; authorisation to issue statutory instruments**

Local jurisdiction lies with that higher regional court in whose district the administrative act was issued or should be issued; the same applies analogously to sovereign acts which interfere with or give rise to professional rights and duties of those concerned. In all other matters, local jurisdiction lies with that higher regional court in whose district the respondent has his or her place of business or, alternatively, his or her place of residence. Where several higher regional courts have been established in one *Land*, the *Land* government may, by way of a statutory instrument, issue deviating rules concerning the local jurisdiction of the higher regional courts or delegate jurisdiction in relation to administrative matters pertaining to notaries to the highest regional court. The *Land* governments may, by way of a statutory instrument, delegate this authorisation to their respective *Land* departments of justice.

#### **Section 111b**

##### **Procedural provisions**

- (1) Insofar as this Code does not contain deviating provisions in respect of court proceedings, the provisions of the Code of Administrative Court Procedure apply accordingly. Higher regional courts are equal in status to higher administrative courts; section 111d remains unaffected.
- (2) The provisions of the Code of Administrative Court Procedure concerning the participation of honorary judges and sections 35, 36 and 47 of the Code of Administrative Court Procedure do not apply. In disputes between a notary and the supervisory authority responsible for him or her, the court is to notify the chamber of notaries of which that notary is a member of the date of the hearing. Representatives of the chamber of notaries who are subject to an obligation of confidentiality under section 69a (1) are, as a rule, to be permitted to participate in a non-public hearing. The time limits set out in section 116 (2) and section 117 (4) of the Code of Administrative Court Procedure are five weeks in each case.
- (3) Notaries and trainee notaries may represent themselves.
- (4) In derogation from section 80b of the Code of Administrative Court Procedure, the suspensive effect of a rescissory action ends upon an administrative act becoming incontestable.

#### **Section 111c**

##### **Defendant**

- (1) Actions are to be brought against that chamber of notaries or authority
  1. which issued or would be required to issue an administrative act; the same applies analogously to sovereign acts which interfere with or realise professional rights and duties of those concerned;

2. whose decision is the subject matter of the proceedings.

Actions against examination decisions and other measures taken by the Examination Office are to be brought against the head of the Examination Office.

(2) In proceedings between a member of the presiding board or executive board and a chamber of notaries, the chamber of notaries is represented by one of its members who is to be specifically appointed by the president of the competent court.

#### **Section 111d**

##### **Appeal on points of fact and law**

The parties involved have the right to file an appeal on points of fact and law against judgments, including part-judgments, judgments as to the merits of a claim and interlocutory judgments on admissibility, provided they are admitted by the higher regional court or by the Federal Court of Justice. Part 12 of the Code of Administrative Court Procedure applies to the appeal proceedings, with the proviso that the higher regional court takes the place of the administrative court and the Federal Court of Justice takes the place of the higher administrative court.

#### **Section 111e**

##### **Legal actions against elections and resolutions**

(1) Elections and resolutions of the constituent bodies of the chambers of notaries, of the Federal Chamber of Notaries and of the Funds, excepting those concerning guidelines pursuant to section 71 (4) no. 2, may be declared invalid or null and void if they were founded on a violation of the law or by-laws, or if their content is incompatible with the law or by-laws.

(2) A legal action may be brought by the authority exercising state supervision or by a member of a chamber of notaries. An action against a resolution which is brought by a member of a chamber of notaries is admissible only where the member asserts that the resolution violates his or her rights.

(3) The member of the chamber of notaries must file the action within one month following the election or the adoption of the resolution.

#### **Section 111f**

##### **Fees**

In administrative matters pertaining to notaries, fees are levied in accordance with the Fee Schedule in Annex 2. In all other respects, the provisions of the Court Fees Act (*Gerichtskostengesetz*) applicable to costs in proceedings before the courts of the administrative jurisdiction apply accordingly, unless otherwise provided under this Code.

#### **Section 111g**

##### **Value in dispute**

(1) The value in dispute is assessed in accordance with section 52 of the Court Fees Act. The assessment is made ex officio.

(2) In proceedings concerning an action for the appointment of a notary or the appointment of a trainee notary, removal from office, dismissal or dismissal from a previous location of office or discharge from the service as trainee notary, the value in dispute is assumed to be 50,000 euros. The court may determine a higher or a lower value, taking account of the circumstances of the individual case, in particular the extent and importance of what is at stake, and the claimant's asset and income situation.

(3) The assessment is non-appealable; section 63 (3) of the Court Fees Act remains unaffected.

#### **Section 111h**

##### **Legal redress for excessive length of proceedings**

The provisions of Title 17 of the Courts Constitution Act apply to legal redress for excessive length of court proceedings. The provisions of this Code concerning the composition of the

higher regional court and of the Federal Court of Justice in administrative matters pertaining to notaries do not apply.

#### **Part 4** **Transitional and final provisions**

##### **Section 112**

###### **Delegation of powers of *Land* departments of justice by statutory instrument**

The *Land* governments are authorised to delegate, by way of a statutory instrument, the tasks and powers accorded to the *Land* departments of justice under this Code to the authorities subordinate to them. The *Land* governments may, by way of a statutory instrument, delegate this power to the *Land* departments of justice.

##### **Section 113**

###### **Notaries' Fund and Notaries' Fund for the Five Eastern Länder**

(1) The Notaries' Fund (*Notarkasse*) is a public-law institution with legal capacity of the Free State of Bavaria. It has its seat in Munich. Its area of activity covers the Free State of Bavaria and the district of Zweibrücken Higher Regional Court. It has an official seal. It is subject to the legal supervision of the Bavarian State Ministry of Justice, which exercises supervision based on more detailed agreement reached between the involved departments of justice. The budget and financial management of the Notaries' Fund is audited by the Highest Bavarian Audit Institution under the provisions of the Bavarian Budget Code (*Bayerische Haushaltsordnung*).

(2) The Notaries' Fund for the Five Eastern Länder (*Ländernotarkasse*) is a public-law institution with legal capacity of the Free State of Saxony. It has its seat in Leipzig. Its area of activity covers the districts of the chambers of notaries in Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia. It has an official seal. It is subject to the legal supervision of the State Ministry of Justice of Saxony, which exercises its supervision based on more detailed agreement reached between the involved departments of justice. The budget and financial management of the Notaries' Fund for the Five Eastern Länder is audited by the Audit Institution of Saxony under the provisions of the Budget Code of Saxony (*Sächsische Haushaltsordnung*).

(3) The Notaries' Fund and the Notaries' Fund for the Five Eastern Länder (the Funds) are responsible for

1. supplementing the professional income of notaries insofar as this is necessary to maintain the proper preventive administration of justice;
2. providing for notaries who have retired upon reaching retirement age or on account of being unable to discharge their office, for trainee notaries who are unable to undertake their service, and for surviving dependants, whereby the amount of the provision is calculated independently of the contributions paid and in accordance with the pensionable service time, including credited and supplementary periods;
3. providing uniform insurance cover for notaries pursuant to section 19a and chambers of notaries pursuant to section 61 (2) and section 67 (3) no. 3;
4. promoting the continuing academic and practical training of notaries and trainee notaries, and the professional training of staff employed by notaries, including conducting examinations;
5. making available the required funding to the chambers of notaries established in the areas covered by the Funds;
6. paying the salaries of trainee notaries on behalf of the chambers of notaries;
7. managing the finances of the notarial positions taken on by an administrator for a notary on behalf of the chambers of notaries;

8. rendering expert opinions under the law governing notarial costs when requested by a *Land* department of justice, a court or an administrative authority in the areas of activity of the Funds.

(4) The Funds may take on further tasks corresponding to the purpose for which they were established. In particular, they may

1. employ qualified persons who are assigned to notaries in the areas of activity of the Funds for the provision of services,
2. maintain facilities and institutions within the meaning of subsection (4) no. 3 either alone or together with the other of the two Funds or the chambers of notaries,
3. conclude follow-on insurance over and above subsection (3) no. 3,
4. take on the centralised execution of administrative tasks of individual notarial positions, thereby participating voluntarily to the exclusion of the realisation of profits in return for reimbursement of costs.

(5) Tasks assigned to the chambers of notaries may be delegated by the *Land* departments of justice to the Funds with the consent of the chambers of notaries and of the Funds.

(6) Notaries are obliged to employ those persons assigned to them for the provision of a service who are in an employment relationship with one of the Funds.

(7) The procedural provisions applicable to civil-servant salaries apply accordingly to the pension and salary claims established under subsection (3) no. 2 and no. 6 against the Funds.

(8) The constituent organs of each Fund are its president and administrative board. The president and the members of the administrative board act in an honorary capacity. They may, however, receive appropriate compensation for their activities and reimbursement of their necessary expenses.

(9) The presidents represent their Fund in and out of court. The presidents manage the business of their Fund and are responsible for seeing to those matters which are not incumbent upon the administrative board. The presidents chair the meetings of the administrative board and enforce its resolutions.

(10) The president of the Notaries' Fund is elected for a four-year term of office by the notaries in the Fund's area of activity. The president of the Notaries' Fund for the Five Eastern Länder is elected for a four-year term of office by the Fund's administrative board. The presidents must be notaries in the area of activity of their Fund and may not simultaneously be a member of the administrative board.

(11) In particular, the administrative boards take decisions in regard to

1. by-laws and administrative provisions,
2. the budget and adapting expenditure to budget needs,
3. the amount of the salaries paid to trainee notaries,
4. the principles applicable to the training, examination and hiring of qualified employees,
5. determining the total number of and the principles applicable to assigning qualified employees to notaries,
6. the principles on which the Funds' investments are to be based.

The administrative boards adopt their resolutions with a simple majority of the votes cast, unless otherwise provided under the by-laws.

(12) The members of the administrative board of the Notaries' Fund are elected for a four-year term of office by the notaries in the respective higher regional court districts in the Fund's area of activity. The notaries in a higher regional court district elect two members



each to the administrative board. If the number of inhabitants in a higher regional court district exceeds two million, the number of members of the administrative board from that higher regional court district increases by one member per two million inhabitants or parts thereof. The members of the administrative board must be notaries with their location of office in the district of the relevant higher regional court.

(13) The members of the administrative board of the Notaries' Fund for the Five Eastern Länder are elected for a four-year term of office by the notaries in the respective chambers of notaries in the Fund's area of activity. The notaries in a chamber of notaries elect two members each to the administrative board; if the number of inhabitants in the district of a chamber of notaries exceeds three million, three members are to be elected. The members of the administrative board must be notaries with their location of office in the district of the relevant chamber of notaries.

(14) Section 69a applies accordingly to the constituent bodies and employees of the Funds. The administrative boards may exempt them from the obligation of confidentiality. It is for the administrative boards to grant permission to testify in court and administrative proceedings.

(15) The Funds are to be consulted before notarial positions are advertised and withdrawn and before trainee notaries are appointed in the Funds' area of activity.

(16) Before adopting their budget, the chambers of notaries in the Funds' areas of activity consult the Funds. An advisory board is to be formed at each of the Funds to discuss the matters referred to in subsection (3) no. 5, to which each chamber of notaries in the Funds' areas of activity seconds one member and the administrative board seconds the same number of members. The presidents of the Funds chair the meetings of the advisory boards. The Funds are not bound by the vote of the advisory boards.

(17) The Funds impose charges on notaries based on the relevant by-laws on charges insofar as this is necessary in the fulfilment of their tasks. Assets may be formed to safeguard those obligations which result from the Funds' tasks. The amount of the charges is based on each notary's ability to pay. The charges may also be graduated according to the sum of the fees to be levied by each notary. The by-laws on charges may determine allowances and fees which are exempt from the duty to pay a charge. Further, they regulate

1. the basis for assessing the charges,
2. the amount, assessment and due date of the charges,
3. the procedure for collection,
4. a notary's ancillary duties under tax law,
5. the deferment of and interest on the charges owing, and late payment fines and securities,
6. whether and in what amount the salaries of trainee notaries (section 7 (4) sentence 4) or of qualified employees assigned to a notary are to be reimbursed.

If no by-laws relating to charges have been adopted, the supervisory authority may provisionally set the charges. Outstanding charges may be collected on the basis of requests for payment issued by the president together with a certificate of enforceability pursuant to the provisions applicable to the enforcement of judgments in civil matters. The Funds may verify whether the notary is fulfilling the duty to pay charges, including the underlying cost calculations and cost collection. Notaries are to permit the person commissioned with conducting the audit to inspect their documents, records, registers and accounts, they must hand these over and supply the required information.

(18) The Funds may, in the exercise of their powers, request notaries and trainee notaries to supply information, to present records and registers, and to appear in person before their president or administrative board. After issuing a prior written warning, the presidents may impose a penalty payment – even more than once – in order to prompt notaries and trainee notaries to fulfil these obligations. The penalty payment may not exceed 1,000 euros in each

instance. The penalty payment accrues to the Fund; it is recovered in the same way as outstanding charges.

(19) In all other respects, the tasks and legal relations of the Funds, their constituent organs and their competence are determined under the by-laws. The adoption and amendment of the by-laws and the by-laws relating to charges require approval by the supervisory authority and publication in order to be effective.

#### **Section 113a (repealed)**

#### **Section 113b**

##### **Chambers of notaries outside of areas of activity of Notaries' Fund and Notaries' Fund for the Five Eastern Länder**

Chambers of notaries outside the areas of activity of the Notaries' Fund and of the Notaries' Fund for the Five Eastern Länder in whose area of responsibility full-time notaries are appointed may

1. take measures to provide the necessary support to the incumbents of newly-occupied notarial positions;
2. levy graduated membership dues from notaries pursuant to section 73 (1) based on each notary's ability to pay; the business figures and the sum of costs levied by a notary may be used, either individually or taken together, as the assessment basis;
3. levy extraordinary membership dues from a notary who does not continue a joint practice with a successor in office.

#### **Section 114**

##### **Special provisions applicable to Baden-Württemberg**

(1) In Baden-Württemberg full-time notaries are appointed. The special provisions of subsections (2) to (9) also apply to Baden-Württemberg.

(2) Whoever, on 31 December 2017, was employed as a notary by the *Land* of Baden-Württemberg or who, as a deputy notary within the meaning of the Baden-Württemberg Act on Non-Contentious Jurisdiction (*Badenwürttembergisches Landesgesetz über die freiwilligen Gerichtsbarkeit*) of 12 February 1975 (Law Gazette for Baden-Württemberg, p. 116), as last amended by Article 4 of the Act of 21 April 2015 (Law Gazette for Baden-Württemberg, p. 281), in the version applicable on 31 December 2017, was working in the Notarial Recording and Preventive Administration of Justice departments within a state notarial office and who had, at his or her own request, been released from employment by the *Land* of Baden-Württemberg as at midnight on 31 December 2017, is regarded as being appointed as a full-time notary on 1 January 2018.

(3) The notaries referred to in subsection (2) continue to conduct the notarial business of the divisions and departments in the state notarial offices of which they were in charge on 31 December 2017 in their capacity as full-time notary. The *Land* of Baden-Württemberg continues to be entitled to cost claims under the previously applicable provisions of *Land* law, including transitional provisions, to the extent which a notary would be entitled in relation to an administrator for a notary pursuant to section 58 (2) sentence 2. The notaries referred to in subsection (2) take over the notarial records and books and the officially deposited documents and valuables which were kept in these divisions and departments or had been handed over to them.

(4) Notarial business of the divisions and departments of state notarial offices which is not continued pursuant to subsection (3) and has not yet been completed on 31 December 2017 will be wound up by liquidators for a notary (*Notariatsabwickler*). Specific details regarding the office of liquidator for a notary are set out in *Land* legislation.

(5) Persons who were appointed as notary by the *Land* of Baden-Württemberg on 31 December 2017 or who met the conditions for appointment as district notary and who apply

to be appointed as full-time notary are equal to applicants who have served for three years as a trainee notary and are trainee notaries in the service of the *Land* of Baden-Württemberg. Section 5 (5) thus does not apply. Section 6 (1) and (2) applies, with the proviso that account is also to be taken of the applicant's professional background, especially performance whilst in the judicial service of the *Land*.

(6) Access to the service as trainee notary within the meaning of section 7 is also open to anyone who was qualified for the civil-service career of district notary on 31 December 2017. The *Land* department of justice may refrain from taking on persons qualified to hold judicial office under the German Judiciary Act to serve as trainee notaries if suitable applicants who are qualified for the civil-service career of district notary pursuant to sentence 1 are available; selection from amongst such applicants is to be based on personal and professional aptitude, taking particular account of the result of the professional examination for civil servants. Whoever has served a three-year period as a trainee notary and is a trainee notary in the service of the *Land* of Baden-Württemberg is deemed to be qualified within the meaning of section 5 (5).

(7) The supervisory authorities may also commission public officials of the *Land* of Baden-Württemberg who were employed as a notary by the *Land* of Baden-Württemberg on 31 December 2017 or who met the conditions for appointment as district notary with reviewing and monitoring the exercise of notarial duties and the service of trainee notaries.

(8) Whoever, on 31 December 2017, was qualified for the civil-service career of district notary may also be appointed as deputy notary or administrator for a notary.

(9) Section 69 (3) sentence 1 does not apply.

#### **Section 115 (repealed)**

#### **Section 116**

##### **Special provisions applicable to individual *Länder***

(1) Lawyers commissioned as notary who are in the employ of the *Land* of Baden-Württemberg on 31 December 2017 remain in office. Upon request and after being heard by the chamber of notaries at their previous location of office, they may be appointed as full-time notary. Sections 4a and 5 (4), section 6 (1) and (2), and sections 7 and 13 do not apply. Upon appointment as full-time notary, admission to the legal profession is deemed to be finally revoked. The *Land* department of justice is required to notify the bar association of any appointment pursuant to sentence 4.

(2) Section 3 (2) does not apply to Hamburg and Rhineland-Palatinate.

(3) Only lawyers commissioned as notary are appointed in the area referred to in Article 1 (1) of the Inter-State Treaty between Mecklenburg-Western Pomerania and Lower Saxony on the Restructuring of Communities in the Former Amt Neuhaus and Other Areas to Lower Saxony (*Staatsvertrag zwischen den Ländern Mecklenburg-Vorpommern und Niedersachsen über die Umgliederung der Gemeinden im ehemaligen Amt Neuhaus und anderer Gebiete nach Niedersachsen genannten Gebiet*).

#### **Section 117 (repealed)**

#### **Section 117a**

##### **Chambers of notaries in Frankfurt am Main Higher Regional Court district and in eastern *Länder***

(1) In derogation from section 65 (1) sentence 1, there may be two chambers of notaries in the district of Frankfurt am Main Higher Regional Court.

(2) The chambers of notaries already established in Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia on 8 September 1998 whose seat is, in derogation from section 65 (2), not located at the seat of the higher regional court continue to exist.

### **Section 117b**

#### **Special provisions applicable to trainee notaries and notaries from eastern *Länder***

In derogation from section 5 (5), whoever completed their degree in law at a higher education institution in the German Democratic Republic by taking the state examination and completing a two-year preparatory service plus a state examination may also be appointed as notary. The requirement of a two-year preparatory service plus a state examination is waived where a person worked as a notary in a state notary's office or in the legal profession for 10 years and provides proof of possessing knowledge specific to notarial office.

### **Section 118**

#### **Transitional provision relating to records, books and registers**

(1) The regulations concerning records and registers under sections 45, 51a, 55 (1) and (2), section 58 (1) and (3) sentence 3, sections 63, 74, 93 (2) sentence 2, (3) sentence 3 and (4) sentence 1 and 2, and section 113 (17) and (18) apply accordingly to a notary's books relating to the years up to and including 2021.

(2) Sections 45, 51 (1) sentence 2 and 3 and (3), section 55 (1) and section 58 (1) in the version applicable on 31 December 2021 continue to apply to records, books and registers which the local court was already holding in safe custody before 1 January 2022.

(3) The retention periods for records, books and registers in the safe custody of the local court or chamber of notaries are governed by the provisions applicable to notaries.

### **Section 119**

#### **Transitional provision relating to previously deposited collections of documents**

(1) Local courts may transfer into electronic form written documents from notaries' collections of documents, including memoranda, which it is holding in safe custody. Transfers made in accordance with sentence 1 must in each case encompass the entire year in a collection of documents. Electronic documents are to be kept in electronic collections of documents. A register of documents is to be created for each electronic collection of documents. Section 55 (2) of the Notarial Recording Act applies accordingly. Any inheritance contracts kept in the collections of documents are first to be put in separate collections and replaced in the collections of documents by certified copies. Section 56 (1) and (2) of the Notarial Recording Act applies accordingly to the transfer of paper documents into electronic form and the inclusion of electronic documents in electronic collections of documents; the certifying officer of the court registry acts in lieu of the notary. Section 56 (4) of the Notarial Recording Act applies accordingly to the legal status of electronic documents. At a minimum, the notary's name and location of office, the year of the deed register and the serial number under which the notarial acts were entered in the deed register are to be included in the register of documents.

(2) The retention periods applicable up until the transfer continue to run for the respective electronic documents. As from their transfer, the retention periods relating to the transferred documents are governed by section 50 (1) sentence 1 no. 3 of the Ordinance on the Keeping of Notarial Records and Registers (*Verordnung über die Führung notarieller Akten und Verzeichnisse*). The retention periods relating to the transferred documents begin to run anew on the first day of the calendar year following inclusion of the electronic documents in the Electronic Document Archive and end, at the latest, upon the expiry of the retention period relating to the respective electronic documents. The retention periods relating to deed registers apply accordingly to registers of documents.

(3) Notaries may transfer into electronic form written documents in collections of documents held in their safe custody for the years up to and including 2021, including memoranda, and may also create registers of documents without such transfer. Subsection (1) sentence 2 to 9 and (2) applies accordingly. Sentences 1 and 2 apply accordingly to the transfer into electronic form of written documents drawn up between 1 January and 30 June 2022, with the proviso that the entire half year takes the place of the entire year as referred to in subsection (1) sentence 2.

- (4) Chambers of notaries may transfer into electronic form written documents in collections of documents held in their safe custody for the years up to and including 2021, including memoranda, and may also create registers of documents without such transfer. Subsection (1) sentence 2 to 9, (2) and (3) sentence 3 applies accordingly.
- (5) (repealed)

## **Section 120**

### **Transitional provision relating to taking over by public archive**

- (1) Upon the expiry of the respective retention periods, the deed register, the register of names relating to the deed register and the written documents kept in the collection of documents for the years up to and including 2021 are to be offered to the competent public archive based on the relevant provisions of law relating to archives concerning such taking over. Sentence 1 also applies to written documents kept in collections of documents which were drawn up between 1 January and 30 June 2022.
- (2) If collections of documents for the years up to and including 2021 which are to be held in safe custody by the local court are deposited in the safe custody of the competent public archive, then the provisions concerning the issuing of execution copies and copies of court documents apply to the issuing of execution copies and copies by the local court. In derogation from section 45 (5), the costs in such cases accrue to the Public Treasury.