



# Association For Consumer Rights (Malta)

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## **Association for Consumer Rights Malta (ACR)**

### **Title of Resolution: Payment Solutions to avoid Notarial Fraud**

#### **Justifications, reasons and current situations to be addressed.**

Over the years, several cases have arisen where notaries have misused the deposits and also failed to pass on the tax money collected from property buyers to the tax authorities. This means many citizens had become victims of fraud.

Money for property purchases, including deposits, registration fees and taxes due to the Inland Revenue Department, are handed to a Public Notary who acts as an intermediary in the property deal. The money for the taxes were not passed on to the CfR. The CfR will not accept to grant its consent for the processing of the documentation for eventual registration of the Public Registry (Insinwa). Therefore, the property cannot be registered in the buyer's name unless the buyer pays his stamp duty again and also the capital transfer tax of the seller.

Complaints have been presented to the Ombudsman, who appointed by Parliament, acts as an arbiter between citizens and Government Departments. Ombudsman wants to see prompt redress and the victims not having to pay again in order to have the property registered in their name. Ombudsman also proposed that the chief notary to the government step in to register the property transfer deed, without any further expense to the client whose notary defaulted, and the government reserving the right to take action against the notary in question.

Unfortunately, all the recommendations are being ignored by Parliament. Ombudsman has written in the papers several times over the last years that he is being ignored. An opinion by the Court of Revision of Notarial Acts is also being ignored by Government.

The ombudsman suggested that online systems, whereby tax and duty payments are made directly to the department on the same day as the publication of the contract, should be considered.

In 2021, the Notarial Council said online payment of property taxes and registration fees was the solution to protect clients from the situation whereby notaries, entrusted with their funds, could default.

Back then, the government had said talks were under way to protect notarial clients and that digital solutions were being explored after buyers were left in the lurch. These avoided having to pass money for property purchases through third parties, including notaries, who would no longer hold funds for clients but would still be responsible for the transactions concluded before them.

The following statements were found published in the Times of Malta: “The ombudsman also urged the justice ministry to discuss the possibility of providing the notarial council with the resources necessary to carry out its functions as the proposed creation of integrated web services and tokenised payments for property transfer and registration has been on the drawing board since 2016.”

“The justice ministry has said it would be improving the use of digital technology and real-time registration systems.”

Yet nothing has been done so far.

## **Proposals/Recommendations**

The Ombudsman recommended that the related ministries and the office of the state advocate hold talks with the notarial council to introduce legal provisions that offer “more robust protection for the service user”. ACR has some solutions for this unfortunate situation.

### **INSURANCE**

Some may suggest insurance yet the mandatory insurance cover already exists for all practicing notaries as they have to buy and be covered for professional liability insurance of a minimum of 250,000 euros as a condition of their practice and this is ensured by the Notarial Council.

Yet insurance will not cover malicious theft, gambling etc . It will cover only accidental mistakes by notaries. Therefore, insurance is not a solution to intended actions of fraud.

### **COMPENSATION FUND**

ACR is recommending that the Notarial Council should be responsible in setting up and managing a compensation fund where notaries contribute a sum every year to be used in cases of notarial abuses. This requirement of a fund could be mandated in legislation and this fund to pay out to reimburse and /or compensate clients who are victims of malpractice on the part of the notary.

There is already a similar legislation, called the Bank Recovery and Resolution Directive, BRRD. If a bank or a systematically important investment firm goes into liquidation the customer will not lose money as this Resolution Fund will pay out.

In 2024, another Directive was signed off to be effective in two years and this is called the Insurance Recovery and Resolution Directive to cover cases of liquidation of insurance companies referred to as the IRRD. This Directive aims to ensure that EU authorities have a harmonised, credible set of resolution tools to intervene sufficiently early and quickly if insurance companies are failing or likely to fail, to ensure a better outcome for policy holders, while minimising the impact on the economy.

Therefore, as you can see, consumers are protected when they deposit or invest their money in banks, investment firms or insurance companies and so why not when they deposit their money with notaries? The compensation fund should be risk based so that small notaries do not have to contribute as much as large notarial firms.

## **ESCROW ACCOUNT**

We are suggesting the set-up of an escrow account by the notary where property deposit money and money intended for the Commissioner for Revenue CfR is deposited.

An escrow account is set up by a bank in which both the seller and buyer (or their notaries) are joint account holders. Escrow accounts are often used to hold money, securities, funds or any other kind of asset, providing protection for all parties. An escrow agency will collect fees from both parties, which are usually expressed as a percentage of the transaction's value. For example when it related to Home Loans, when a buyer puts down a deposit, the funds are placed in escrow while they carry out their due diligence checks on a home, investment property or commercial property. If, for instance, the homebuyer's report reveals something that could compromise the sale, the buyer knows that their deposit is protected. Of course, this comes along with payment of fees to the bank holding the account. The bank will only release the money once evidence is provided of the sale i.e. by showing the Deed of Transfer.

## **Future Action**

MCESD

These proposals will be put forward to MCESD.

Collective Redress

MEP Peter Agius offered his support if we manage to get a group of victims together.

A letter with a specific ask to MEPs, something concrete, such as: Can they press Maltese government to pass a law that requires notaries to contribute to this

compensation fund which would reimburse and /or compensate clients who are victims of malpractice on the part of the notary.

Highlight this injustice and articulate our remedial proposals to:

- Maltese ministers concerned, such as Minister that regulates notaries, Minister for Finance, Minister for Social Dialogue and the Prime Minister.
- Shadow Ministers concerned
- All MPs through their parliament email

Suggested remedial proposals:

1. Pass law that requires notaries to set up a compensation fund overseen and administered by the Notarial Council which would reimburse and /or compensate clients who are victims of malpractice on the part of the notary
2. Ensure existing laws require notaries to put clients' money in assigned protected professional accounts in a specified bank in Malta, and not in bank accounts in notary's personal name.
3. Ensure that notaries are legally required to contribute to this Compensation Fund as a requirement by law and as one condition to be awarded warrant and permission to practice as notary.
2. Enforce the above laws

Additionally, we can write to the the Kunsill Nutarili ta' Malta, explaining our proposals and asking that they work with the authorities to affect the proposed legislative improvements. Particularly we also ask the Kunsill Nutarili to vet that a person has committed to this fund before granting a warrant, and require that warranted notaries, submit such proof annually.

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