

## **NOTARIAL AUTHENTICATION – IN A WORLD OF FAKE NEWS AND MANY FAKE THINGS**

### ***Introduction***

The underpinning purpose of Notarial Authentication of documents is the principle of authenticity. This means that the Notary's role is to confirm the identity of the parties signing the agreement in his/her presence or to perform reasonable checks to establish that the agreement is authentic and what it purports to be.

### ***Transactions/actions requiring Authentication***

In the following instances, documents require Authentication, for example:

- Offshore property is purchased or sold;
- Money is transferred to or from an offshore account;
- When contracting with a foreign party and the agreement cannot be executed in one jurisdiction;
- You have applied for a position to work abroad;
- Transporting your minor child without the other parent being present and as such the consent of the other biological parent is needed.

In South Africa, inter alia, according to Government Notice R277 3 March 1967, read with the Hague Convention regarding abolishing the Requirement for Legalization for Foreign Public Documents (also referred to as the Apostille Convention or an Apostille Treaty); documents must generally be authenticated by a Notary Public and an apostille or equivalent certificate attached for it to be acceptable for use abroad.

### ***Virtual and Electronic Authentication***

When certifying a copy of an original document, you must make a note of section 18 read with section 14 of the Electronic Communications and Transactions Act 25 of 2002 as amended (the "ECT Act"), which provides considerations of when an electronically generated document can be certified to be a true original.

Section 14 of the ECT Act provides as follows:

*"Where a law requires information to be presented or retained in its original form, that requirement is met by a data message if-*

*(a) the integrity of the information from the time when it was first generated in its final form as a data message or otherwise has passed assessment in terms of subsection (2); and*

*(b) that information is capable of being displayed or produced to the person to whom it is to be presented.*

*(2) For the purposes of subsection 1 (a), the integrity must be assessed-*

*(a) by considering whether the information has remained complete and unaltered, except for the addition of any endorsement and any change which arises in the normal course of communication, storage and display;*

*(b) in the light of the purpose for which the information was generated; and*

*(c) having regard to all other relevant circumstances."*

## **Fraud**

However, like many institutions, notaries are not exempted from "fraudsters" or "scammers" particularly now in a virtual environment.

According to the National Notary Association, notaries should guard against the following:

- "Notarizing a document without the signer being present.
- Notarizing the signature of an imposter by failing to identify them properly.
- Notarizing a signature of someone unaware of what they are signing or being pressured to sign.
- Giving the scammer access to your Notary seal and/or journal records."<sup>1</sup>

## **Conclusion**

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<sup>1</sup> [https://www.nationalnotary.org/notary-bulletin/blog/2018/07/5-scammers-notaries-need-to-watch-out-for?utm\\_campaign=bulletin20210719&utm\\_medium=social&utm\\_source=linkedin&utm\\_content=5Scammers](https://www.nationalnotary.org/notary-bulletin/blog/2018/07/5-scammers-notaries-need-to-watch-out-for?utm_campaign=bulletin20210719&utm_medium=social&utm_source=linkedin&utm_content=5Scammers): accessed 22 July 2021

It is clear that a mere assumption on face value is not sufficient. Thus, what is the best practice in the responsibility of Authentication:

1. Perform a check on the identification of the person who will be signing the document, this should include visual checks for discrepancies on the identification document, and further should consist of checking with the issuing authority whether same is still valid and authentic;
2. Ensure that the person signing is signing willingly and understands the document they are being asked to sign;
3. Checks against electronic documents can include a database search to compare to establish authenticity.

Notaries must ensure that reasonable steps to safeguard the Authentication process. Reasonable and responsible steps should be taken to identity of parties and the documents before putting pen to paper. In addition, not to take risks such as certifying a document based only based on trust in the person or familiarity with the person and finally, protecting your stamp, seal and protocol against unauthorised access.