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PECULIARITIES OF CERTAIN TYPES OF NOTARIAL PROCEEDINGS IN UKRAINE

Monograph

Praha
Publishing House Education and Sciense
2021

Recommended for publication by the Academic Council of the Educational and Scientific Institute of Law, Psychology and Innovative Education of the Lviv Polytechnic National University
(record № 14/21 of 14.05.2021)
by the Academic Council of the Lviv Polytechnic National University
(record № 75 of 29.06.2021)

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Peculiarities of certain types of notarial proceedings in Ukraine: monograph. Lviv: Educational and Scientific Institute of Law, Psychology and Innovative Education of the Lviv Polytechnic National University. 2020. 187 p.

Dolynska Mariia – chapters 5, 6, 8
Marych Khrystyna – chapter 7
Markovych Khrystyna – chapters 1, 2, 3
Nimak Mariia – chapter 4
Pavliv-Samoil Nadiia – chapter 9

ISBN 978-80-907845-6-7

The monograph is devoted to a comprehensive theoretical analysis of the principles of the notarial process in Ukraine, taking into account new challenges and threats in the notarial field. The peculiarities of notarial proceedings are determined, the problems that arise in the implementation of notarial activities are analyzed. The monograph is recommended for teachers, scientists, graduate students, practitioners, students.

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FOREWORD

A clearly defined system of notarial activity is a reliable mechanism for the protection of rights and freedoms in a state governed by the rule of law, and is also necessary to bring certain social relations to the state required by law. Notarial activity, as a kind of legal and in turn a kind of social activity, is aimed at ensuring and protecting the rights and legitimate interests not only of citizens and legal entities, but the state and society as a whole.

Such form of security and protection of rights and legitimate interests as notarial has a long history of formation and development, as well as the practice of application.

The development of notarial activity today largely depends on the credentials imposed by the state on the notarial bodies to perform notarial and other actions to give them legal credibility, as first of all notarial activity is aimed at giving official force, legal credibility to rights, facts and documents.

The development of public relations, their pro-European orientation contribute to the fact that in notarial practice there are still many pressing issues that require a thorough rethinking and further improvement of the institute of notary in the context of European integration.

In turn, the development of the notary science requires a deepening of the theory of the notarial process, including a detailed study of the specifics and peculiarities of notarial proceedings.

The complexity and versatility of these issues necessitated a complex, comprehensive analysis of theoretical, legal and practical aspects of the notarial process.

The content of the monograph is aimed at highlighting the most pressing issues arising in the procedural activities of notaries, the reasons for their occurrence and possible solutions.

The monograph examines the basics of the notarial process in Ukraine, including scientific views and modern approaches to the problem of legal definition of the notarial process, peculiarities of notarial proceedings to perform various notarial acts, the activities of notaries to implement inheritance law and more.

The monograph is aimed to promote the improvement of notarial legislation, research and educational process.

We hope that this monograph will be useful for legal scientists, teachers and students of higher education institutions, as well as anyone interested in theoretical and practical issues of the notarial process.

Section 1.

NOTARIAL PROCESS AND NOTARIAL PROCEEDINGS: ETYMOLOGY OF CONCEPTS AND THEIR RELATIONS

The institute of notary, as an object of modern scientific research, is an important phenomenon that can attract the attention of domestic and foreign scientists. The state governed by the rule of law, implementing the protection of the rights of citizens and others, assigns a leading place to the notary as a body of undisputed jurisdiction. However, in the theory of law insufficient attention is paid to procedural issues of notarial activity, which, including a wide range of legal actions, is not limited to the procedure of affixing a seal and signature of a notary.

Given the large number of transactions that are subject to mandatory notarization, in modern law, the notarial process is an integral part and a way for citizens to exercise their undisputed rights out of court. Despite the fact that today the concept of notarial process is widely studied at the general theoretical level, in Ukrainian legislation the terms "notarial

process", "notarial proceedings" and "notarial procedure" are not regulated. Therefore, the disclosure of the content of these key concepts will contribute to the practical understanding and theoretical study of the procedural nature of notarial activities.

Referring to the scientific work of V. V. Barankova, it should be noted that the author interprets the notarial process as a form of notarial activity, a kind of legal process, which provides a statutory procedure for performing notarial acts. The notarial process is considered as a specific legal form of activity, within which the application of legal norms is carried out through the implementation of notaries' legal powers in undisputed cases.

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In the scientific literature, the notarial process is defined as a complex system of legal forms of the notary activity and citizens interested in the legal outcome, governmental and non-governmental organizations, governed by legal norms with subsequent consolidation of its results in the relevant notarial acts [19, p. 107]. Thus, the notarial process means the activities of notarial bodies carried out in the manner prescribed by law. The content of this activity is formed by the mutual rights and obligations of the subjects of the notarial process - notarial bodies and persons who apply for notarial acts. Therefore, the notarial process must be clearly regulated by a special law, as the procedural regulation unite all notaries, regardless of the form of organization of the notary.

The core of the notarial process is notarial proceedings, which include the actions of the notary, the persons who applied to him/her and the persons who assisted the notary in performing notarial acts. However, today among the scientific community there is a debatable question about the formation of a single definition of this concept, because in the literature we often encounter the equating of the concepts of "notarial process" and "notarial proceedings".

A valuable contribution to the development of the theory of the notarial process was made by S. Ya. Fursa, whose works became a new milestone in the

study of this legal category. The scientist interprets the concept of "notarial proceedings" as a set of procedural actions performed by a notary and other subjects of the notarial process, which are aimed at certifying indisputable rights and facts and performing other notarial acts to give them legal credibility in the manner prescribed by law [44, p. 327].

A somewhat similar definition is given by Yu. V. Zhelikhovska, calling notarial proceedings a set of consecutive notarial acts that have legal significance in order to give them legal credibility and a consistent process of its registration [16, p. 85]. From the definitions presented by the authors, we see that one of the subjects of notarial proceedings is a notary, and the subject and result of its activities - the performance of a notarial act.

Equally interesting is the opinion of M. V. Bondareva, which characterizes the notarial proceedings as a lawful act, which is an element of complex legal structures that give rise to legal consequences [5, p. 55]. The author emphasizes the notarial proceedings as a particularly important, independent element of the legal structure, the absence of which will cause the absence of this composition and prevent the occurrence of legal consequences.

Section 2.

CLASSIFICATION OF NOTARIAL PROCEEDINGS

Analysis of the provisions of Art. 34 of the Law of Ukraine "On Notaries" (hereinafter - the Law) allows us to note that the classification of notarial proceedings is carried out on various grounds, and this helps to better understand their broad list. Despite all the variety of classifications of notarial proceedings, the common denominator of them is that they have a specific purpose, and therefore all can be classified by purpose.

It is possible to differentiate notarial proceedings by other peculiarities, in particular, by the content of notarial acts, their legal result. The classification of notarial proceedings contributes to their proper organization, because systematizing notarial proceedings on certain grounds, you can see their material and procedural nature.

According to the classification of V. N. Argunov, it is proposed to divide all notarial proceedings into mandatory - when notarization is necessary for the exercise of subjective rights and optional - are committed at the discretion of individuals and legal entities at their request [3, p. 37].

We believe that such a classification, although having the right to exist, does not distinguish the types of notarial proceedings and does not disclose the procedural peculiarities of the performance of mandatory notarial acts.

According to the content, K. S. Yudelson divides notarial proceedings into: certificates of transactions; certification of indisputable circumstances; security actions; confirmation of property rights; securing obligations; assistance in fulfilling obligations by debtors; providing evidence; assistance in fulfilling indisputable obligations by making a writ of execution [49, p. 150]. However, this classification is difficult to call perfect, because on the one hand it covers a fairly broad area, in particular on the certification of indisputable facts, and on the other - a fairly narrow range, such as fulfilling of obligations.

We can call the classification of notarial proceedings according to the stages of development of legal relations into four groups more successful. The first group includes proceedings aimed at the emergence and confirmation of legal relations (certificates of transactions; issuance of certificates of inheritance; issuance of certificates of ownership of a share in the joint property of the spouses). The second group consists of proceedings aimed at securing and enforcing civil legal relations (imposing a ban on the

alienation of real estate; acceptance of money and securities on deposit; writs of execution; protest of promissory notes; protesting bills in cases of dishonor and preparing acts of honor). The third group includes proceedings that have a protective value (taking measures to protect hereditary property). The fourth group includes proceedings of a universal nature, which relate to different types of legal relations (certifying the authenticity of copies of documents; witnessing the authenticity of the signatures on applications, documents; certifying the authenticity of translation of documents from one language to another, etc.) [19, p. 151]. The proposed classification allows to divide notarial proceedings according to their legal result into two main groups: some notarial proceedings are related to the emergence and confirmation of legal relations; the rest are aimed at achieving a different result.

R. G. Kocharyants's proposal to build a system of notarial functions taking into account the influence of notarial proceedings on the development of legal relations is similar to the analyzed classification. At the same time, the author highlights such functions: emergence, confirmation and provision of legal relations; enforcement of obligations; ancillary nature. The researcher, studying the concepts of "notarial functions" and "notarial acts", came to the conclusion

that these concepts are unjustifiably equated and identified the relationship between notarial functions and notarial acts, where the latter are a form of implementation of notarial functions. In the proposed classification, the researcher identified the range of notarial acts through the implementation of notarial functions. Thus, the first group includes notarial acts aimed at implementing the function of legal relations (certificates of transactions, powers of attorney, wills). This function is implemented in cases where notarization is required by law. The second group includes notarial acts aimed at the implementation of the function of confirmation of existing legal relations and includes the issuance of certificates of: the right to inheritance, ownership of a share in the joint property of the spouses; purchase of a residential building by public auction. As we can see, this function is realized at the moment when the legal relationship has already arisen. The third group consists of notarial acts aimed at implementing the function of ensuring legal relations, which include: taking measures to protect hereditary property; imposing a ban on the alienation of real estate; acceptance of money and securities on deposit. The fourth group includes proceedings aimed at implementing the function of enforcement of obligations (writs of execution, protests of promissory notes, certificates of protesting bills in cases of

dishonor). The fifth group is formed by proceedings aimed at implementing the function of ancillary nature, which includes witnessing of the authenticity of the signature on the document, certifying the authenticity of copies, acceptance of documents for storage [22, p. 12 - 14].

The classification of notarial proceedings by purposefulness deserves attention. Based on their purpose, scientists distinguish five groups of notarial proceedings: those aimed at certifying undisputed rights; to provide a document of executive force; to certify indisputable facts; to ensure legal relations; notarial proceedings of an ancillary nature.

In the category of notarial proceedings aimed at certifying undisputed rights, the authors include the issuance of a certificate of inheritance to confirm the existing indisputable right of inheritance. This group includes the issuance of a certificate of ownership of a share in the joint property of the spouses in order to confirm the subjective rights of citizens.

The group of notarial proceedings related to the issuance of a document of executive force includes the issuance of writs of execution, the purpose of which is not only to certify the fact of debt, but also to provide a document of executive force in accordance with the law. Thus, the notary, having established the indisputability of the right to recovery, authorizes its

enforcement. In performing this action, the notary not only confirms the right of claim, but also facilitates its enforcement.

The group of notarial proceedings aimed at certifying indisputable facts includes: certificates of transactions; acceptance of money and securities on deposit; protesting bills in cases of dishonor and preparing acts of honor; promissory notes; certificate of the fact of a citizen being alive; certificate of the fact of finding a citizen in a certain place; certifying the time of presentation of the document; certifying identity of a citizen with the person depicted in the photo.

The group of notarial proceedings aimed at ensuring legal relations is formed by proceedings to take measures to protect hereditary property. The purpose of such proceedings is to prevent the possibility of theft, damage or destruction of property, which ensures the rights of heirs and the state, in whose ownership the property may pass by inheritance. Measures to protect property are also taken in the interests of the testator's creditors. This group also includes imposing a ban on the alienation of real estate in order to prevent its alienation. Such a notarial act ensures the fulfillment of the obligation arising from the issuance of a loan for the construction or purchase of real estate.

The authors include the acceptance of documents for storage to notarial auxiliary proceedings [19, p. 152 - 153]. We cannot ignore the valuable work of S. Ya. Fursa, who based the classification of notarial proceedings on five main criteria: the functions of notarial proceedings; legal content and purpose of notarial proceedings; the procedure for notarial proceedings; terms provided for storage of notarial documents; quantitative composition of participants in the notarial process [44, p. 328].

Depending on the functions, the author distinguishes between law enforcement and law protection notarial proceedings. The scientist correctly emphasized the direction of law enforcement proceedings to prevent possible cases of violations. This group includes acknowledgment of contracts, which prevents the occurrence of offenses and litigation. In case of non-compliance by the parties with the requirements for acknowledgment of the contract, such is null and void, which is provided by the norm of Part 1 of Art. 220 of the Civil Code of Ukraine. Law protection notarial proceedings are aimed at eliminating the existing offense, in particular: the protest of the promissory notes; writ of execution on the protested promissory note and a notarized agreement on the recovery of money and transfer of property. Such actions will be a sufficient legal basis

for initiating enforcement proceedings in the event of voluntary foreclosure by the borrower.

According to the legal content and purpose, notarial proceedings are classified into four groups. The first group of notarial proceedings for the certification of undisputed rights includes: issuance of a certificate of inheritance; issuance of a certificate of ownership of a share in the joint property of the spouses in the event of the death of one of them; issuance of a certificate of acquisition of property by public auction. The second group of notarial proceedings on the certification of undisputed facts is divided into three subgroups. Thus, the first subgroup includes: issuance of a certificate that the public auction did not take place; certificate of the fact that a individual or legal entity is the executor of the will; certificate of the fact of an individual being alive; certificate of the fact of finding an individual in a certain place; certifying the time of presentation of the documents; transfer of the application of individuals and legal entities to other persons; acceptance of money and securities on deposit; protest of promissory notes; committing maritime protests; protesting bills in cases of dishonor and preparing acts of honor. The second subgroup includes certificates of transactions, contracts, wills, etc. The third subgroup is aimed at certifying indisputable facts: the authenticity of copies

(photocopies) of documents and their extracts authenticity of the signature on the documents; certifying the authenticity of translation of documents from one language to another. The third group of notarial proceedings for the provision of documents of executive force is formed by actions of writs of execution on documents for which debt collection is carried out in an indisputable manner: notarized agreements providing for payment of money, transfer or return of property; mortgage agreements, which provide for the right to apply for foreclosure on the subject of the mortgage in the event of overdue payments on the principal obligation before the expiration of the principal obligation; credit contracts under which debtors overdue payments on obligations; other documents provided by the List of documents according to which debt collection is carried out in an indisputable order on the basis of executive inscriptions of notaries approved by the Resolution of the Cabinet of Ministers of Ukraine № 1172 of 29.06.1999 [34]. The fourth group consists of protective notarial proceedings aimed at: taking measures to protect hereditary property; imposition and lifting of a ban on the alienation of immovable property (property rights to immovable property) and vehicles subject to state registration; acceptance for storage of documents.

According to the order of notarial proceedings, scientists have proposed a division into single-stage and multi-stage. Thus, for single-stage it is sufficient to perform a single action, an example of this is the certification of copies of documents. Multi-stage proceedings involve a more complex procedure and require a certain number of documents, the participation of one or more persons, the preparation of requests. This includes the formation of inheritance case.

Classification by terms of storage of notarial documents contributes to the allocation of such terms that will affect the assignment of notarial proceedings to certain groups, given the duration of storage of notarial acts: less than 10 years; temporary storage up to 75 years; permanent storage [44, p. 331]. Such a classification is also important for entities that apply for a notarial act, given their right to obtain information about the documents that will remain with the notary. Because when certifying the contract, the notary must inform the person about the period of storage of materials of notarial proceedings, the time during which the documents must be stored, and the possibility of obtaining their duplicates and copies.

Of practical importance is the classification of participants in the notarial process by quantitative composition to determine the consent of all parties to

the notarial proceedings. Thus, each subject should be given the right to refuse to perform notarial proceedings, to appeal the correctness of its commission and the legality of the refusal to perform it. According to the author, it is necessary to distinguish between multi-subject and single-subject notarial proceedings, given the number of persons who apply to a notary for their commission. This classification is important in proceedings for the certification of a real estate purchase agreement, owned by several entities on the right of joint ownership.

The analysis of the classifications of notarial proceedings proposed by scientists indicates the principle of completeness, which is the basis for the division of all notarial proceedings. Such a logical conclusion follows from the ultimate goal of notarial activity - the certification of indisputable rights, facts that have legal significance to ensure their legal credibility. As we can see, the notarial process covers various types of notarial proceedings, the key feature of which is the absence of any legal dispute. Notaries carry out notarial proceedings only on undisputed rights and facts in order to provide documents with executive force and legal credibility. In the event of a dispute, the notary explains to the person concerned the possibility of going to court.

Section 3.

STAGES OF NOTARIAL PROCEEDINGS

Notarial proceedings, as legally regulated activities, form certain stages, which together form a single procedural whole. To avoid possible mistakes, it is necessary to find out what procedural actions will be taken at a certain stage, which will form a notarial procedure. This will help to specify the actions of the notary at different times and at each stage of the proceedings. Thus, the stages help to determine the dynamics and sequence of procedural actions. The stage, as an integral part of the notarial process, is formed by a set of procedural actions, which are characterized by a specific range of subjects with certain rights and responsibilities inherent in this stage.

The stages of the notarial process involve the development of the main categories of stages, their classifications and criteria for activities specific to a particular stage. In the desk-book for notaries there are three stages of notarial proceedings:

1) launching of notarial proceedings;

2) establishment of the legal structure necessary for the performance of a notarial act;
3) the commission of a notarial act [28, p. 57].

D. Ya. Maleshin offers an interesting classification, distinguishing four stages of notarial proceedings on the basis of civil proceedings:

1) launching of proceedings; preparation; implementation; completion of proceedings. The first stage involves setting a goal, its further detailing and correlation with current conditions. The definition of specific tasks occurs in the following actions. At the second stage the choice of concrete means, creation of conditions for effective performance of notarial actions by carrying out the analysis of the legislation, preparation of draft documents, the certain law and other actions is carried out. At the third stage take place the main process of notarial activity - notarial action. The fourth stage completes the notarial proceedings and is the result of preliminary actions, which is formalized in the relevant procedural documents. According to the author, such a scheme of stages can be applied to notarial activity, which, in his opinion, develops within four stages: 1) launching of notarial proceedings, resolving the issue of the possibility of performing a notarial act;

2) establishment of the legal structure necessary for performance of notarial action;

3) performance of a notarial act by a notary or refusal to perform such an action depending on the established actual composition;

4) issuance of a notarial act [25, p. 133].

We agree with the opinion of S. Ya. Fursa that notarial proceedings are formed by several phases, at each of which there are stages of notarial proceedings. Thus, the author identified three stages of the notarial process:

1) the opening of notarial proceedings;

2) preparation for notarial proceedings;

3) direct commission of a notarial act, which ends with a notarized document and its issuance [44, p. 360].

A similar classification of stages of the notarial process is given by V. V. Komarov and V. V. Barankova, highlighting the following mandatory stages: launching of notarial proceedings; preparation for the performance of a notarial act; consideration of a notarial case on the merits and adoption of a notarial deed [30, p. 85].

Let's try to consider the content of the stages of the notarial process and the actions of the notary on each of them. The first stage is the opening of notarial proceeding, which begins by virtue of the principle of

dispositiveness, by filing an application by the person concerned and its acceptance by a notary. As a general rule, notaries and officials equated to them perform a notarial act upon a written or oral application of the person who applied to them. However, the legislation provides for cases of notarial acts at the initiative of a notary or other persons, an example of which is the norm of Art. 60 of the Law on taking measures to protect hereditary property.

Thus, the opening of notarial proceeding begins from the moment of the applicant's application to the notary and ends with the adoption of a decision to commit or refuse to perform a notarial act. From this point of view, the moment of emergence of notarial procedural legal relations should be considered the appeal of the person concerned with the application to the notary and its acceptance. S. Ya. Fursa quite rightly considers the filing of the application by the subject and its acceptance by the notary as facts of legal significance. The scientist believes that such a provision is a possibility to confirm the beginning of the notarial act, which should be paid, and notes that from this moment it is necessary to take into account the time spent by the notary to perform notarial proceeding. Otherwise, from this same moment the applicant gets the opportunity to challenge the actions of the notary [44, p. 360]. In fact, the opening of

notarial proceeding acts as a fixation of the appeal of interested persons to the notary for the performance of a notarial act. In general, the initiation of proceeding is by the personal initiative of the person concerned. However, there are cases when other persons or bodies in the interests of a third party may apply to a notary for a notarial act, such as certifying the authenticity of copies of documents, their extracts, taking measures to protect inherited property. Therefore, the provisions of Art. 43 of the Law prohibit the performance of a notarial act in the absence of persons - its participants or their authorized representatives. At the first stage of notarial proceedings, the notary and the official who performs notarial acts must identify the person who applied for such an act and check the legal capacity of individuals and legal entities involved in transactions.

The legislation clearly defines the grounds for refusing to initiate notarial proceedings. According to Art. 49 of the Law such grounds are: committing an act that contradicts the legislation of Ukraine; failure to submit information and documents required to perform a notarial act; the action is subject to commission by another notary or an official who performs notarial acts; the notary has doubts about the awareness of the individual who applied for a notarial act, about the meaning, content, legal consequences of this action;

application for a notarial act of a person who has been declared incompetent in accordance with the procedure established by law, or lack of the necessary powers of the representative of the interested person; inconsistency of the transaction concluded on behalf of the legal entity with the purposes specified in its charter, or going beyond their activity; failure to pay for the performance of a notarial act by a person who has applied for it; failure of the person who applied for a notarial act to make the payments established by law related to its commission; entry of a person who has applied for a notarial act to alienate the property belonging to him/her, in the Unified Register of Debtors; and other cases provided by law [37]. Analyzing the above-mentioned, we support the opinion of scientists on the division of grounds for refusal to open notarial proceedings into two groups. The authors included in the first group the cases when the persons concerned do not have the right to apply to a notary or an official who performs notarial acts. For example, the actions requested by the applicant are contrary to the law or the transaction that the legal entity intends to enter into does not correspond to the scope of its civil capacity. The second group includes cases when the applicant has not complied with the necessary conditions for exercising the right to apply to notarial bodies, in particular, the application of an

incapacitated person to a notary with a request to perform notarial acts, etc. [30, p. 86].

The second stage of the notarial process is the preparation for the notarial proceedings, which establishes the legal structure necessary for the performance of a notarial act. Basically, we are talking about legal facts of financial and legal nature, which altogether determine the possibility of a notarial act. The notary, based on the nature of the notarial act, determines the range of necessary facts, for the establishment of which may require certain documents or invite other persons. It is important at this stage to verify compliance with the rights of minors, third parties who do not participate in the notarial act - the second spouse, the owner of the property in transactions with the property of legal entities. It is at this stage that the notary must verify the objective and subjective conditions and make a final decision on the possibility of notarial proceedings or refusal to do so. A group of objective statutory conditions, form the conditions for:

- belonging of the notarial act to the competence of notaries. It is necessary to take into account the general conditions of jurisdiction of legal issues to notarial bodies. The determining feature in the delimitation of the competence of the notary and judicial bodies should be considered the possibility of

acknowledgment by a notary only of undisputed rights, while the disputed legal relationship is considered in court;

- the absence of any restrictions on the right to perform notarial proceedings. Thus, the legislator established a ban on notaries and local government officials to perform notarial acts in their own name and on their own behalf, in the name and on behalf of their husband or wife, his (her) and their relatives (parents, children, grandchildren, grandfather, grandmother, brothers, sisters), as well as in the name and on behalf of employees of the notary office, employees who are in employment with a private notary, or employees of this executive committee. Officials of the local self-government body are not entitled to perform notarial acts also in the name and on behalf of this executive committee. In such cases, notarial acts are performed in any other notary office, private notary or executive committee of another local government body. In addition, the officials listed in Art. 40 of the Law prohibits the acknowledgment of wills and powers of attorney in his/her own name and on his/her own behalf, in the name and on behalf of his/her husband or wife, his (her) and their relatives (parents, children, grandchildren, grandfather, grandmother, brothers, sisters) [37]. In case of violation of the requirements

established by the legislation, notarial and equivalent actions are invalid;

- the existence of the conditions, established by substantive law norms, for applying to a notary for notarial proceedings. We note that the existence of the prerequisites established by law for applying to a notary and persons equated to him/her for notarial acts should be perceived as a direct indication of the law on compliance with the notarized form of the transaction. Part 1 of Art. 209 of the Civil Code of Ukraine states that a transaction made in writing is subject to notarization only in cases established by law or by agreement of the parties. Thus, for example, acknowledgment of wills (Part 3 of Art. 1247 of the Civil Code of Ukraine), marriage (Art. 94 of the Civil Code of Ukraine), hereditary (Ar. 1304 of the Civil Code of Ukraine) agreements, lifetime support contract (Part 1 of Art. 745 of the Civil Code of Ukraine) , transactions for the alienation of real estate is carried out in a notarized form, regardless of the will of the applicant. In some cases, the possibility of notarial proceedings depends on the participation of witnesses, persons who will sign instead of a person with physical disabilities, in particular in Part 1 of Art. 1253 of the Civil Code of Ukraine it is provided, in the cases specified in par. 3 pt. 2 Art. 1248 and Art. 1262,

the mandatory presence of at least two witnesses to testify a will [48];

- the absence of prohibitions to perform notarial acts. Such prohibitions may include: seizing by a judicial or investigative body in order to secure a claim in the case of acknowledgment of a contract for the alienation of immovable property; the existence of a ban on the alienation of immovable property imposed by a notary to prevent the acknowledgment of the contract of alienation of immovable property, which is the subject of a lifetime support contract. As a result, the imposition of a ban on the alienation of immovable property or its seizing is aimed at depriving individuals and legal entities of the right to dispose of property and, at the same time, is an objective ground for refusing to perform notarial proceedings concerning this property;

- compliance of notarial proceedings with the legislation of Ukraine and international acts. It is quite clear that the performance of notarial proceedings should be based on compliance with applicable law. This is primarily due to the fact that the notary cannot certify contracts or any other transactions that do not meet legal requirements. The norm of Part 3 of Art. 47 of the Law clearly states the prohibition of acceptance and provision of legal credibility to documents that do not meet the requirements of the law or contain

information that degrades the honor, dignity and business reputation of an individual or business reputation of a legal entity, which have erasures or additions, crossed out words or other unconditional corrections, documents whose texts cannot be read due to damage, as well as documents written in pencil [37].

One example of mandatory compliance with this condition is the performance of notarial proceedings of witnessing the authenticity of the signature on the document;

- legal capacity of legal entities and individuals. One of the duties of a notary in performance of notarial proceedings is to verify the legal capacity of individuals and legal entities. Referring to the norm of Art. 91 of the Civil Code of Ukraine, we note that, checking the legal capacity of a legal entity, it is necessary to determine whether it is limited by a court decision. As for the legal capacity of an individual, it may be limited or the person may be declared incapacitated by a court. In this case, the exercise of his/her rights in the notarial proceedings will be carried out by a legal representative. Given these situations, the notary must decide whether to perform a notarial proceeding or refuse to do so;

- the presence of certain legal facts that determine the right of a person to perform notarial proceedings - actions, events, conditions. In fact, there

are many legal facts that determine a person's right to perform notarial acts, and for each proceeding they are determined by law, and play an important role in giving individuals clearly defined rights. In certain proceedings, a person must prove the existence of such legal facts by appropriate evidence. For example, actions - the conclusion of a representation agreement, events - the death of the testator, the state - the incapacity of the person;

- compliance of the transaction concluded on behalf of the legal entity with the purposes specified in its charter or other constituent document. This requirement is aimed primarily at ensuring the state regulation of business activities of economic entities and other forms of activity. It should be noted that this norm in no way restricts their rights, as a legal entity may make changes and additions to the statute in the manner prescribed by law, and then apply to a notary. Also, failure to file a patent or license to conduct business activities at the request of a notary is grounds for refusal to perform notarial proceedings;

- the presence of the representative's powers to perform notarial proceedings in the interests of another person. The scope of powers of the representative, the limits of their exercise and the documents asserting the powers may be established by law, and therefore exist outside the will of the constituent. In particular, Art.

242 of the Civil Code of Ukraine provides such a type as legal representation and determines its subject composition. Given the Art. 1286 of the Civil Code of Ukraine, the subject of representation may be the executor of the will, which status is determined by the norms of the Central Committee of Ukraine.

Considering the objective conditions of notarial proceedings, we note that a set of subjective conditions form the conditions for:

1) subjects of notarial proceedings. Thus, notarial proceedings are possible only after the person identification. Art. 43 of the Law establishes a comprehensive list of documents on which the person who applied for notarial proceedings is identified;

2) the need to pay state fees for notarial acts by state notaries, officials of local governments. Thus, the norm of Part 1 of Art. 42 of the Law provides for mandatory advance payment for notarial proceedings, except as provided in Art. 4 of the Decree of the Cabinet of Ministers of Ukraine "On State Duty";

3) the need to pay for the performance of a notarial act by private notaries. Thus, Art. 31 of the Law provides for a fee for a notarial act, the amount of which is determined by agreement between the notary and an individual or legal entity [37];

4) payment to state notaries of funds for the provision of additional legal services that are not

related to notarial acts, as well as for technical services. Thus, the legislation of Ukraine establishes a separate fee for the provision of additional services of legal, technical, informational nature, not related to the performance of a notarial act;

5) payment of taxes in case of certain types of notarial proceedings. Please note that notaries when performing such notarial acts as the issuance of a certificate of inheritance, acknowledgment of gift deed must verify the payment of individual income tax to the state budget;

6) compliance of the form of appeal to the notary with legal requirements. In general, most applications to a notary or other official provide for an oral form. However, for certain types of notarial proceedings, a written request is required. For example, the issuance of a certificate of inheritance is preceded by a written application for acceptance or renunciation of the inheritance. Although the law does not enshrine the content of this application, the notary emphasizes to the applicant the information it must contain.

The main tasks at the stage of preparation for the notarial proceedings are to take actions related to: establishing the factual circumstances relevant to the case; determination of substantive law rules that must be applied by a notary in the performance of notarial

proceedings; determining the composition of other persons who will participate in the commission of a notarial act and verification of their legal capacity; identification of interested persons, whose rights and interests may be affected by the performance of a notarial act; determining the range of persons who will assist the notary in performing notarial acts (witnesses, translators, experts, specialists, etc.); inspection, assessment of documents for their compliance with the law (sufficiency, affiliation, admissibility, indisputability); checking the presence of real estate seizing and other ways to secure the claim, which can have a significant impact on the performance of a notarial act [44, p. 372 - 373].

Therefore, the basis for the notarial act is the actual composition, which is confirmed by certain evidence necessary for the opening of a particular notarial proceedings. It should be emphasized that the stages of opening and preparation of notarial proceedings exist in a separate form as notarial acts of great complexity and length in time, for example in the conduct of inheritance cases. When performing relatively simple notarial acts, in particular the witnessing of the authenticity of the signature on the document, almost all stages of notarial proceedings are carried out simultaneously, and their separate allocation is hardly possible.

Having completed a set of preparatory actions, the notary proceeds to the third stage - the direct performance of notarial proceedings, which consists of a series of procedural actions of the notary and other participants, the result of which is the issuance of a notarial deed. It is at this stage that the notary must verify the compliance of the content of the notarial act with the requirements of the law and the intentions of the persons concerned. The actions of the notary at this stage are reduced to: verification of the authenticity of the intentions of the participants in the notarial proceedings to certify the transaction; registration of the transaction on the corresponding notarial form; signing of a notarized transaction by its parties, representative, other person in case the applicant has physical defects; making a notary certification on the document; registration of a notarial deed in paper and electronic registers; issuance of the original notarial deed to the parties of the transaction;

Scientists distinguish several parts of the considered stage: preparation, direct execution of the notary certification or issue of the certificate and registration of notarial act.

The content of the preparatory part are the actions to establish the facts of the case. Therefore, the notary is obliged to check the submitted documents, provide them with a final legal valuation and come to a

conclusion on the legal facts, rights and interests of the interested person who applied for a notarial act.

Summarizing the above-mentioned, the performance of a notarial deed is:

1) the issuance of certificates of: the right to inheritance; the right to a share in the joint property of the spouses; transfer of the application; certifying identity of a citizen with the person depicted in the photo; acceptance for storage of documents in accordance with the attached description; certificate of the fact of an individual being alive and in a certain place, etc.;

2) in the issuance of a writ of execution;

3) in the implementation of the notary certification on: transactions; contracts; debt documents on the money deposit; bills in cases of dishonor; documents on the time of their presentation; bills of honor;

4) in the implementation of the notary certification on: witnessing the authenticity of the signatures on the document; the authenticity of translation or copy of the document;

5) in making an inscription prohibiting the alienation of property;

6) in drawing up the act of description of hereditary property;

7) in the commission of a maritime protest; 8) in drawing up an act of protest of the bill in: dishonor, non-acceptance, no dating of acceptance [30, p. 90].

We should pay attention to Art. 42 of the Law, which provides for the possibility of postponing a notarial act in case of: the need to request additional information or documents from individuals and legal entities; sending documents for examination; if the notary has to make sure that the interested persons do not object to the performance of this action. In such cases, the term of the notarial act may not exceed one month. Art. 52 of the Law stipulates the obligation to record all notarial acts performed by notaries or local government officials in the registers for registration of notarial acts after making a notary certification on the document or signing a document issued by a notary [37].

It is especially important when performing a notarial act to ensure compliance with the rules of both substantive and procedural notarial law. Observance of a notarial procedural form is mandatory, as ignoring this requirement may lead to the invalidation of an essentially correct notarial deed.

The development of the notarial process is impossible without an analysis of the concept of "notarial procedure", the need for which is due to the

importance of notarial acts, notarial deeds and notarial proceedings.

Among scientists, the concept of notarial procedure is defined as the statutory procedure for notarial acts by authorized entities on behalf of the state, as well as a set of statutory rules governing the sequence and possible behavior of subjects in notarial legal relations. It is correctly noted that the notarial procedure is formed by the general procedure and special rules of notarial proceedings, which include both general rules of notarial acts (proceedings) and special (specific) rules of acknowledgment of certain types of contracts [44, p. 47].

Another opinion is expressed by O. Karmaza, noting that the procedure of performance of notarial acts, i.e. notarial procedure and its result are covered by a single concept - notarial act, which has separate components [20, p. 5]. Disagreeing with this statement, we emphasize the need to distinguish between the concepts of "notarial act" and "notarial activity", as the latter is much broader and includes a large number of different proceedings (e.g., proceedings for the certification of contracts, inheritance proceedings, proceedings for other notarial acts).

We consider the opinion of S. Ya. Fursa to be correct, who came to the conclusion that if the procedure is a static norm, and procedural activity is its

dynamic criterion, the latter must constantly check the notarial procedure for compliance with the needs of individuals and society. In this way, the researcher demonstrates the mutual influence of the procedure on the correctness of the activities of notaries, which should be controlled by the judiciary bodies, court, prosecutor's office and other government agencies. At the same time, notaries, performing notarial acts, must constantly "check" the procedure for its "capacity" in specific conditions and positively influence its improvement in accordance with the needs of protection and defense of the interests of all entities, including state. Accordingly, each procedure must have certain limits, and the notarial procedure - to ensure legal credibility of notarial acts. The author rightly noted that most processes correspond to the procedure of their performance, as most notarized transactions are not recognized by the court as invalid, and most notarial acts are not appealed [44, p. 23].

It so happened that the notarial process is connected, first of all, with civil legal relations. The notary is entrusted with the performance of certain notarial acts aimed at the legal consolidation of indisputable civil rights and facts. Notaries promote the realization of citizens' rights and prevent their possible violation. The formation of notaries and notarial proceedings is due primarily to the needs of civil law.

However, notarial procedures cannot be considered in connection with civil law relations alone, as their main and functional purpose is much broader.

It should be noted that the importance of the notarial procedure is not limited to its functional purpose to be a way of emergence, change and termination of legal relations. For example, a notarized contract provides an opportunity to obtain valuable proof of the existence of certain rights and obligations - a notarized document that reflects the content of the agreement. The value of a notarized document as evidence is determined primarily by its authenticity. And in case of a dispute, a notarized contract makes it easier for the party to substantiate their claims, because the fact officially confirmed by a notary no longer needs to be proved by other means.

Speaking about the importance of notarial procedure, its role as a form of state control over the legality of notarial acts should not be underestimated. Therefore, the notary certifies the contract only if it is concluded that it does not contradict the requirements of the law. The need for such control and the suitability of the notarial procedure for its implementation should encourage the legislator to establish in regulations requirements for notarized transactions.

It should be noted that the notarial procedure may have the right of confirmatory value. In particular,

such a purpose is typical of procedures related to the issuance of notarial certificates (certificates of inheritance, ownership of a share in the joint property of the spouses), are means of confirming undisputed rights. The procedure for resolving the issue of issuance of a certificate of inheritance becomes especially important in cases when the inheritance includes such objects as a house, car, etc., which are on special registration and are subject to re-registration in the relevant state body, which is not can be done without presenting a certificate.

We consider the opinion of S. Ya. Fursa to be correct, who names three elements of the notarial procedure: the order, rules and fixation of notarial proceedings, which together should ensure a single content and sequence of notarial acts for all notaries of Ukraine and persons authorized by law to perform notarial acts [44, p. 444].

Today, the vector of modern scientific research should be aimed at the development of notarial procedure. It should be clearly enshrined in law, with the establishment of rules for notarial proceedings, which will allow a uthorized persons to perform notarial acts in a certain sequence - from preparatory actions to the preparation of a notarial deed. Therefore, the notarial procedure must be uniform, mandatory and agreed for all persons authorized by law to conduct

notarial proceedings. Therefore, one of the most important tasks of the reform of notarial activity is the development of clear normative constructions of notarial procedures and unification of notarial procedural norms.

Section 4.

NOTARIAL PROCEDURE FOR ACKNOWLEDGMENT OF CONTRACTS

Contracts determined by law or those contracts that the parties wish to notarize of their own free will are subject to acknowledgment. A notarized contract receives official status, has a greater degree of protection and guarantees of its implementation in comparison with the contract concluded in a simple written form.

Given the variety of civil law contracts that are subject to notarization, notarial proceedings for the acknowledgment of contracts can be divided into several groups. In particular:

- acknowledgment of contracts of alienation and mortgage of real estate;
- acknowledgment of contracts of alienation of movable property;
- acknowledgment of contracts on possession and use of common property;

- acknowledgment of property management agreements;
- acknowledgment of rental, loan, leasing agreements;
- acknowledgment of marriage contract;
- acknowledgment of agreements between spouses, parents of a child, as well as people living in one household;
- acknowledgment of other agreements.

From the peculiarities of certain agreements, their content, parties, etc. - depends on what actions the notary will perform and at what stage of the notarial process.

As S. Ya. Fursa rightly points out, “acknowledgment of contract, as a general rule, belongs to a one-stage notarial procedure, which goes through three stages: opening, preparation and direct conclusion of the contract, which ends with a certificate of notarial deed. However, there are cases when we can say that the acknowledgment of contract is a multi-stage notarial procedure. This is, in particular, when it comes to certification of previous and main agreements, making changes (additions) to the agreement, etc. "[44, p. 665].

Based on the general rule of three-stage notarial proceedings for acknowledgment of contracts, we note that the opening of notarial proceeding in this case is

the application to the notary of the parties of the contract with a request to certify such a contract.

The only thing a notary does at this stage of the proceedings is to find out the intentions of the parties, explain to them their rights and obligations and the legal consequences of the contract, etc., in order to determine which contract, they want to notarize.

The next stage is preparation for the performance of a notarial act.

At this stage, the parties submit to the notary the necessary documents to certify the contract and the notary, studying and analyzing them, establishing the presence or absence of conditions for notarial acts, carrying out appropriate verifications for the presence / absence of obstacles to the contract acknowledgment, decides on the possibility of performing a notarial act (acknowledgment of contract) or refusal to perform it. The set of verifications to be performed by a notary will depend on the type of contract.

Peculiarities of each type of contract are determined by a number of certain preparatory actions or circumstances, the presence or absence of which give grounds to perform a notarial act - to certify the contract.

However, there are actions and circumstances that are mandatory for all types of contracts. In particular:

1) no restrictions on the right for acknowledgment of the contract. Thus, in accordance with Art. 55 of the Law of Ukraine "On Notaries" of September 2, 1993 "acknowledgment of agreements on alienation, mortgage of a house, apartment, cottage, garden house, garage, land plot, other real estate is carried out at the location of such property or at the location of a legal entity, or at the registered place of residence of an individual - one of the parties to the contract. Acknowledgment of agreements for alienation, pledge of vehicles subject to state registration is carried out at the location of the legal entity or at the registered place of residence of the individual - one of the parties to the contract" [37]. In addition, restrictions are also set out in Art. 9 of the Law of Ukraine "On Notaries".

2) The terms of the contract must not contradict current legislation.

In accordance with paragraph 1 of Part 1 of Art. 49 of the Law of Ukraine "On Notaries" notary refuses to perform a notarial act if its performance is contrary to the laws of Ukraine. "Documents that do not meet the requirements of the law or contain information that degrades the honor, dignity and business reputation of an individual or business reputation of a legal entity" (Part 3 of Article 47 of the Law of Ukraine "On Notaries") are not accepted for notarial acts [37].

3) The presence of legal capacity of legal entities and individuals who have applied to a notary for acknowledgment of contract. As for a legal entity, its legal capacity is checked according to the constituent documents and information of the United State Register of Legal Entities, Individual Entrepreneurs and Public Organizations.

The notary also checks whether the acknowledgment of the contract corresponds to the scope of civil capacity and legal capacity of this legal entity, does not contradict the objectives of its activities and does not go beyond its activities. Its representative acts on behalf of the legal entity. The document confirming its authority may be a power of attorney or a document which enshrines the powers of the collegial body and the distribution of responsibilities among its members, if the collegial body acts on behalf of the legal entity.

The notary establishes the legal capacity of the representative and determines the scope of his/her powers to enter into a contract. With regard to individuals, their capacity is determined by the notary on the passport of a citizen of Ukraine or other documents that prevent doubts about the scope of capacity (Part 2 of Article 44 of the Law of Ukraine "On Notaries" [37]), i.e. the same documents on which

the notary establishes the person who applied for the contract acknowledgment.

However, in accordance with Part 1 of Art. 30 of the Civil Code of Ukraine of January 16, 2003 (hereinafter - the CC of Ukraine) “civil capacity is the ability of a person to acquire civil rights and exercise them independently, as well as the ability to create civil obligations, perform them independently and be responsible in case of non-compliance. A person who is aware of the significance of his/her actions and can control them has civil capacity” [48].

It should be noted that both incapacitated and partially incapacitated persons have passports or other identity documents, but they may not always be able to enter into a contract. Thus, only on the basis of a passport or other identity document, a notary is not able to fully determine the extent of a person's legal capacity. According to these documents, he/she has the chance to determine only the age of the person as one of the criteria of legal capacity.

In order to determine the scope of legal capacity in general, the notary must communicate with the person, find out his/her adequacy, the ability to understand the meaning of his/her actions, and so on. In case of doubt, the legislator obliged the notary to apply to the guardianship authority to find out the absence of guardianship or custody of the person (Part

3 of Article 44 of the Law of Ukraine "On Notaries"). If, however, the notary has doubts that the person is aware of the meaning, content and legal consequences of the contract on the acknowledgment of which he/she applies, then according to paragraph 4 of Part 1 of Art. 49 of the Law of Ukraine "On Notary" notary denies him/her an acknowledgment of contract.

It should be noted that the presence of incomplete, partial or limited legal capacity, and in some cases lack of legal capacity is not an obstacle to the acknowledgment of the contract, but requires additional action by the notary and the parties to the contract.

Thus, contracts with the participation of underage, minors, as well as persons with limited legal capacity or declared incapable, the notary certifies with the permission of the body of guardianship and trusteeship to enter into a contract. In addition, the interests of the above-mentioned persons with incomplete legal capacity are represented at the notary by their legal representatives.

Thus, in accordance with paragraphs 3.2, 3.5, chapter 1 of Section II of the Procedure for notarial acts by notaries of Ukraine, approved by the Order of the Ministry of Justice of Ukraine of February 22, 2012 (hereinafter - the Procedure) "contracts for underage are concluded by their parents or adoptive parents, and

for incapacitated - guardians. Contracts on behalf of minors and persons with disabilities are concluded by them and certified by a notary only with the consent of parents or adoptive parents or guardians" [35]. Thus, the notary refuses to certify the contract on this basis if the person is not officially limited in capacity or is declared incompetent, but the notary has doubts about his/her ability to understand the meaning of his/her actions and control them.

4) The presence of true intentions of the parties to certify the contract. In accordance with Part 10 of Art. 44 of the Law of Ukraine "On Notaries", the notary is obliged to "establish the true intentions of each party for the acknowledgment of the contract, as well as the absence of objections of the parties to each of the terms of the contract" [37]. To this end, the notary establishes the same understanding by the parties of the meaning, terms of the contract, its legal consequences for each party.

5) The presence of duly certified powers of the representative, if the contract is certified with his/her participation. The notary establishes the identity of the representative and finds out whether he/she has the right to enter into a contract and under what conditions.

6) Availability of documents and information required to certify the contract. Such documents and information must be provided to the notary by the

parties to the contract. The list of such documents and the content of information is determined by the current legislation depending on the type of contract to be certified.

7) The presence of payment to a notary for the acknowledgment of the contract and the implementation of other payments provided by law. According to Art. 42 of the Law of Ukraine "On Notaries" the contract is certified after payment for its acknowledgment.

As for other payments, their payment is regulated by special legislation depending on the type of contract. So, for example, according to paragraph 1.18., paragraph 1, chapter 2 of Section II of the Procedure "the notary certifies the transaction, which provides for any transfer of ownership of real estate and construction in progress, except for their inheritance and gift, upon availability of a document on payment of personal income tax to the budget" [35].

At the stage of preparation for performance of a notarial act - acknowledgment of the contract, the notary must perform a number of actions that are mandatory regardless of the type of contract. In particular, to establish the facts and determine the regulatory framework to be applied to these legal relations; determine the range of persons whose presence is necessary for the acknowledgment of the

contract, identify them and determine the scope of legal capacity; determine the range of persons whose interests are affected by the acknowledgment of the contract, and verify their consent to the acknowledgment of the contract or otherwise ensure the protection of such interests (for example, the consent of the other spouse to dispose of joint property); determine the range of persons who assist and help the notary in the acknowledgment of the contract (for example, witnesses, translators, etc.); verify the documents submitted to the notary for their validity, authenticity and compliance with applicable law; if necessary, request other documents from individuals and legal entities by submitting a request; verify the relevant information according to electronic registers; to verify the fact of application of the sanctions provided by Art. 4 of the Law of Ukraine "On Sanctions" of August 14, 2014 [38] to the parties of the contract, the presence or absence of the parties of the contract in the list of terrorists; draw up a draft contract and applications.

The specifics of each type of contract necessitates the performance by a notary of certain actions. Therefore, we will continue to talk about those special preparatory actions of the notary to perform each type of contract.

4.1. Peculiarities of notarial proceedings for acknowledgment of contracts of alienation and mortgage of real estate.

Regarding the acknowledgment of contracts of alienation and mortgage of real estate, first of all for the performance of such contracts the notary must check the ownership of the property to its owner, because in accordance with Art. 658 of the Civil Code of Ukraine "the right of sale belongs to the owner" [48]. To do this, the owner must provide the notary with documents confirming his/her ownership of real estate, which he/she wants to alienate or mortgage.

However, from January 1, 2013 state acts on land plot ownership, and from January 1, 2016 certificates of ownership of real estate are not issued, but only the registration of ownership is carried out, so if the owner has acquired ownership of newly created real estate or on the grounds of privatization, reconstruction, etc. after that date, he/she will not have a document confirming the right of ownership. Instead, there will be an entry in the State Register of Real Property Rights, to which the notary has direct access. In this case, the notary independently receives

information on the right of ownership from the above-mentioned register and attaches it to the case file.

However, mortgage contracts, trust agreements, the object of which is real estate owned by a third party and the ownership of which the mortgagor or trust owner acquires after the conclusion of this agreement, are certified before the documents of ownership are made.

If the property to be acquired in the future will be pledged, the person must provide the notary with documents confirming that he/she has the right to acquire property in the future.

In the event that property rights to immovable property, the construction of which has not yet been completed, are transferred to the mortgage, documents confirming the ownership of such property rights shall be submitted to certify the mortgage agreement.

"When certifying the pledge agreement / mortgage agreement, the notary must establish whether the subject of the pledge belongs to the property that can be transferred to secure the fulfillment of the obligation" (paragraph 5.4., chapter 2 of Section II of the Procedure) [35].

There are certain peculiarities in the alienation of land plot. Thus, in accordance with paragraph 3.1., chapter 2 of Section II of the Procedure "when certifying the agreement on the alienation of land plot

that is privately owned, for public needs, the notary requires the submission of a decision of public authorities, authorities of the Autonomous Republic of Crimea or local governments" [35].

In addition to documents confirming the right of ownership of real estate, the person must also provide a notary with documents confirming the state registration of rights to this property, except when the ownership of this property is registered in the State Register of Real Property Rights.

To certify the agreement on the alienation of land plot or its pledge, in addition to the above documents, the notary requires an extract from the State Land Cadastre (paragraph 3.3., chapter 2 of Section II of the Procedure). If, according to the information contained in this extract on the land plot, restrictions or encumbrances are registered, such information shall be specified in the agreement.

It is important to note that when certifying the agreement on the alienation of land plot, the notary also checks the presence or absence of real estate located on such a plot, in order to comply with Article 377 of the Civil Code of Ukraine. If it is available, the agreement can be certified only if the land plot and the real estate located on it are alienated at the same time. Similarly, when alienating of a detached real estate object, the notary checks who owns the land on which

it is located. If such a plot is owned by a person, both objects are alienated at the same time. If not, the alienation of real estate located on the plot is possible only if you provide information about the area and cadastral number of the land plot. Similarly, for pledge agreements.

Acknowledgment of real estate alienation agreements by individuals is carried out in the presence of the appraised value of such property. In cases established by law, in the case of alienation of land plot, the notary requires a regulatory and monetary assessment.

"In cases of pledge of state and communal property, alienation of state and communal property in ways that do not provide for competition of buyers in the sale process, or in case of sale to one buyer, determination of damages or compensation, during dispute resolution and in other cases specified by law or with the consent of the parties, the valuation of property is mandatory" (paragraph 5.10, chapter 2 of Section II of the Procedure) [35]. In these cases, the notary certifies the agreement only if there is an appropriate valuation.

Today, notaries are required to inspect property valuation reports according to the Unified Database of Valuation Reports. Thus, in accordance with paragraph 25, paragraph 172.3. Art. 172 of the Tax Code of

Ukraine of December 2, 2010 "during the acknowledgment of transactions for the sale (exchange) of real estate, notary verifies the content of the electronic certificate of valuation value of real estate for the accuracy of real estate data, unique registration number and date of formation of this certificate or registration of the valuation report in the Unified database and the availability of a unique registration number assigned to it, as well as compares the information about the valuation subject (appraiser) and the market value of the real estate, contained in the valuation report, with the Unified database data" [33].

In the case of alienation of certain real estate, the notary may require other additional information and documents necessary for proper acknowledgment of the agreement.

If the documents submitted to the notary do not contain all the necessary information, or it is contradictory, the notary sends relevant requests to public authorities, local governments and other entities to provide the information necessary to perform a notarial act.

When certifying real estate alienation agreements to which underage, minors, persons with limited legal capacity or incapable persons are a party, the notary shall check the presence of the permission of

the guardianship and trusteeship authorities to enter into this agreement.

Also, in the case of alienation of real estate, the notary must find out whether underage, minors and persons with limited legal capacity or incapacitated have the right to use the alienated property. To do this, real estate owners must submit a statement to the notary. If necessary, the notary may request such information independently from the relevant authorities, enterprises, institutions, etc. If it is established that the above-mentioned persons have the right to use the real estate that is being alienated, the notary will certify the agreement only with the permission of the body of guardianship and trusteeship to certify such an agreement.

If the notary certifies the agreement on real estate of a minor child with the participation of one of the parents, the consent of the other must be submitted to the notary in the form of an application witnessing the authenticity of the signature of the absent parent, except in cases provided by law.

Acknowledgment of the agreement of alienation of real estate by a minor or a person with limited legal capacity is carried out by a notary only with the consent of parents or guardians and with the permission of the body of guardianship and trusteeship.

When certifying the researched type of agreements, the notary must also find out the legal regime of the real estate that is the subject of the agreement. The right of personal property is determined on the basis of documents submitted to the notary and a personal application of the owner, in which he/she claims that the property is really his/her personal property. If real estate that is the joint property of the spouses is alienated, the notary must require the consent of the other spouse when certifying the agreement by one of the spouses. Exceptions are only those cases when the notary may establish from the submitted documents that the property is the personal private property of one of the spouses.

Another important action performed by a notary in certifying contracts of sale of shares in the right of joint partial ownership is to ensure the implementation of the preemptive right to purchase this share. Thus, the notary must make sure that in case one of the co-owners sells his/her share to a third party, he/she has notified his/her other co-owners of his/her intention in writing. Accordingly, the notary will certify such a contract, provided that the co-owners receive applications of refusal or after the expiration of the deadline for response.

An important procedural action that a notary must perform at this stage of the notarial process when

certifying agreements of alienation or pledge of real estate is to check the absence of tax lien, prohibition of alienation or seizing of property, mortgage. This information is checked by a notary according to the State Register of Real Property Rights.

If there is a prohibition, the contract of alienation of property is certified only with the consent of the creditor and the purchaser to transfer the debt to the purchaser. In the presence of a tax pledge, an acknowledgment of alienation agreement or pledge is possible only with the written consent of the relevant tax authority (paragraphs 2.3, 5.15, chapter 2 of Section II of the Procedure).

If there is a mortgage, the consent of the mortgagee is required for concluding an agreement of alienation or pledge of property, provided that there is no prohibition on this in the mortgage agreement (item 2, paragraph 2.4, chapter 2 of Section II of the Procedure).

The presence of an arrest is an obstacle to the acknowledgment of the agreement of alienation and the contract of pledge of real estate.

The notary also verifies the absence of information about the alienator in the Unified Register of Debtors. In accordance with paragraph 81 of Part 1 of Art. 49 of the Law of Ukraine "On Notaries" if a person who applied to a notary for an acknowledgment

of alienation of property, entered in the Unified Register of Debtors, the notary refuses to certify such an agreement.

When certifying the agreement of alienation of a residential building, building, structure, the notary verifies the purpose of the land plot on which they are built. If this land plot is not assigned for construction, the notary refuses to certify the agreement.

If the notary certifies the agreement of alienation of the land plot, he/she must check the presence or absence of restrictions (encumbrances) on such land plot. The notary finds out such information according to the extract from the State Land Cadastre.

When certifying an agreement of sale of a mortgage to another person, the notary checks "the availability of information on whether other persons who have registered rights or claims on the subject of the mortgage, refused to receive notifications of intent to sell the mortgage subject" (paragraph 2.11., chapter 2 of Section II of the Procedure) [35]. Otherwise, the notary refuses to certify such an agreement.

For acknowledgment of agreements of alienation by an individual of a residential building, the construction of which is still ongoing and carried out at the expense of local budgets, consent to alienation is required, set out in the decision of the executive committee of the local council or state administration

(Part 5 of Article 55 of the Law of Ukraine "On Notaries").

To certify the agreement of alienation or pledge of property, which is transferred under the contract of property management, the written consent of the founder of management is required, which is set out in the application, the signature of which is witnessed by a notary (paragraph 1.16, chapter 2 of Section II of the Procedure).

Although today notaries are not tax agents, but paragraph 1.18, chapter 2 of Section II of the Procedure obliges them to verify the payment of personal income tax when certifying real estate alienation agreements, except for the gift agreement, and to refuse to certify them in case of non-payment of tax.

4.2. Peculiarities of notarial proceedings for acknowledgment of contracts of alienation of movable property.

With regard to the acknowledgment of contracts of alienation of movable property, both for contracts of alienation of immovable property and for this type of contract, first of all the notary must establish the ownership of the property to its owner. To do this, the owner submits documents confirming his/her ownership of movable property.

It should be noted that movable property may also be the subject of a lifetime support contract. As V. M. Marchenko rightly remarks, if the purchaser under such a contract is a legal entity, "the notary must verify whether the notarial act is consistent with the scope of civil capacity of the legal entity and whether the person representing the legal entity has enough authority, which requires constituent documents that provide authority and certify the official position or power of attorney" [26, p. 80].

When certifying this type of contract, the notary must check the absence of encumbrances according to the State Register of encumbrances on movable property. "In the case of vehicles being in the tax lien,

the contract on their alienation is acknowledged with the written consent of the relevant tax authority" (subparagraph 6.1, paragraph 6, chapter 2, Section II of the Procedure) [35].

The notary finds out the grounds for acquiring ownership of the car. If it has been transferred free of charge (or sold on preferential terms) by the relevant labor and social protection bodies to persons with disabilities, its alienation is not allowed.

Contracts for the alienation of movable property, as well as agreements for the alienation of real estate, except for gift agreements, are certified in case of payment of personal income tax. In order to determine the amount of tax, the owner of movable property must submit to the notary a document on the valuation value of the property. The notary verifies the payment of tax on the basis of the receipt submitted by the seller, and in its absence refuses to certify the contract.

It is the duty of the notary when certifying the contracts of alienation of vehicles to explain to the purchaser the need to register the vehicle with the appropriate authority within ten days after purchase.

4.3. Peculiarities of notarial proceedings for acknowledgment of contracts on possession and use of common property.

With regard to notarial proceedings for acknowledgment of contracts on possession and use of common property, this type of contract includes contracts on determining the size of shares, changing the size of shares, agreements on the allotment of shares in kind, and so on.

As a general rule, the procedure for possession and use of property or its parts may be established in the contract on the alienation of shares.

It should be borne in mind that a notary may indicate the "procedure for possession and use of specific parts of property in the contract of alienation of one of the participants in joint partial ownership of his/her share only if there is a contract between the participants in joint ownership and use of property or for their written consent or in the presence of a court decision on the procedure for possession and use of property (its specific parts)" (paragraph 6.2., chapter 1 of Section II of the Procedure) [35].

If a contract on possession and use of property is concluded between several participants of joint

partial ownership, then the notary requires written consent from all participants of joint partial ownership to establish the procedure for possession and use of property or its specific parts.

To certify an independent agreement on the procedure of ownership and use of real estate, the notary requires documents confirming the ownership of the property or verifies the registration of ownership according to the State Register of Real Property Rights.

When certifying the agreement on the determination of shares, change the size of shares, the notary explains to the parties that such an agreement is an integral part of the document of ownership, except when the ownership is registered in the State Register of Real Property Rights and a document confirming the property right was not issued.

Agreements on the allotment of real estate in kind or on the division of real estate, the notary certifies after the presentation of documents certifying the ownership of such property, or on the basis of information from the State Register of Real Property Rights in the event of state registration of ownership conducted without the issuance of a document certifying such a right.

It should be noted that the acknowledgment of the agreement on the allotment of shares in kind or

division of a house, building, structure by a notary, is certified simultaneously with the agreement on the allotment of shares in kind on the land plot, to certify which the parties submit a notarized agreement on joint ownership of land plot.

Since the notary works only with those cases where there are no disputes about rights, if between the participants of joint partial ownership there are disputes over the definition of shares, change of their size, allotment of shares in kind, division, the notary refuses to perform such a notarial act. In this case, the notary explains to clients their right to go to court to resolve the dispute.

4.4. Peculiarities of notarial proceedings for acknowledgment of property management agreements.

With regard to notarial proceedings for the acknowledgment of property management agreements, when certifying this type of agreement, first of all the notary finds out who is the owner of the property. If the founder of the management is a body of guardianship and trusteeship, and the owner of the property transferred to the management is an individual whose whereabouts are unknown, or a person declared missing, the notary requires a court decision to recognize the person missing, the decision of the relevant executive body to establish property management, which states all the essential terms of the contract, a power of attorney addressed to a representative of the executive body or the body of guardianship and trusteeship for representation and signing the property management agreement.

If the manager of the property under the management agreement is a business entity, the information on the documents confirming the registration of an individual-entrepreneur shall be indicated by a notary in the text of the agreement.

4.5. Peculiarities of notarial proceedings for acknowledgment of rental, loan, leasing agreements.

As for the notarial proceedings for acknowledgment of rental, loan, leasing agreements, we are talking about those agreements for which the law stipulates the obligation of their notarization. In particular, these are rental, loan agreements for buildings, other capital structures (their individual parts) for a period of three years or more, a vehicle with the participation of an individual.

First of all, when certifying this type of agreement, the notary establishes the owner of the property, for which he/she examines the document certifying the ownership of the landlord (lender) for the property, except when the ownership is acquired without issuing such documents and registered in the State Register of Real Property Rights.

If under the rental (loan) agreement of a building or other capital structure a land plot is also transferred to the lessee, the notary shall also inspect the document certifying the right of ownership of the land plot, except when the ownership of it is acquired and registered in the State Register of Real Rights.

"To certify the rental agreement for a building, other capital structure (its separate parts), the notary receives information from the State Register of Real Property Rights by direct access to it, which remains in the notary's files" (subparagraph 3.5, paragraph 3, chapter 5 of Section II of the Procedure) [35].

"To certify the rental agreement for a building, other capital structure (its separate parts), the notary receives information from the State Register of Real Property Rights by direct access to it, which remains in the notary's files" (subparagraph 3.5, paragraph 3, chapter 5 of Section II of the Procedure) [35].

With regard to vehicles, when certifying the relevant agreement of lease (rent), loan or leasing, the notary examines the document of registration of the vehicle in the name of an individual or legal entity or a document confirming the acquisition of ownership by the landlord (contracts, etc.).

When certifying a sublease agreement or a subsequent property loan agreement, the notary must obtain the consent of the landlord (lender).

4.6. Peculiarities of notarial proceedings for acknowledgment of marriage contract.

With regard to notarial proceedings for acknowledgment of marriage contract, the notary establishes the marital status of persons wishing to conclude it, in conversation with the parties clarifies the subject of the contract and its essential terms and the period of validity. No additional documents are required to certify this agreement by a notary.

The notary, when certifying the marriage contract, as rightly noted by Ya. A. Goshovska, "should take into account the following peculiarities provided by current legislation: the subjects of the conclusion may be not only the spouses, but also persons who have filed an application for registration of marriage; is inextricably linked with the person of its conclusion, which excludes the possibility of concluding through a representative; in its content is complex - may cover the terms of other types of contracts provided by law; the content may be the conditions for regulating only the property relations of the spouses; the subject may be property that will be acquired by the parties in the future" [9, p. 16].

If the marriage contract is concluded with the participation of a minor, the notary certifies such a contract only with the written consent of the parents or guardian of the person, which is set out in the form of an application, the authenticity of signatures is witnessed by a notary.

It should be noted that the main task of the notary in certifying this type of contract is to assist the parties in settling their property relations as a spouse, determining their property rights and responsibilities as parents in accordance with applicable law.

4.7. Peculiarities of notarial proceedings for acknowledgment of agreements between spouses, parents of a child, as well as people living in one household.

Notarial proceedings for acknowledgment of agreements between spouses, parents of a child, as well as people living in one household. It should be borne in mind that "the conclusion by one of the spouses with a third party of contracts of sale, exchange, gift, rent, lifetime support (care), pledge, inheritance agreement on its share in the joint ownership of the spouses is possible only if it is determined or allotment in kind" (subparagraph 4.1, paragraph 4, chapter 5 of Section II of the Procedure) [35]. However, if such an agreement is certified by one of the spouses in favor of the other, it is not necessary to determine or allot a share, the notary proceeds from the equality of shares.

First of all, when certifying contracts with the participation of spouses, parents, children, the notary establishes family relations, verifies the fact of registration of civil status acts according to the State Register of Civil Status Acts.

When certifying the support contract of one of the spouses, the notary verifies the fact of incapacity of the spouse for whose support the contract is concluded, and finds out whether he/she is entitled to support. In the text of such a contract, the notary must indicate the incapacity for work and the circumstances that entitle one of the spouses to support. On his/her copy of the contract, the notary makes a mark in which he/she indicates the name and details of the document confirming the circumstances of the support.

The above-mentioned contract can also be made between a man and a woman who live in one family but are not married. In this case, the notary must find out the existence of a court decision to establish the fact of residence of these persons in one family. In the absence of such a decision, he/she refuses to certify the contract.

When certifying the contract on termination of the right to support in connection with the obtaining of a lump sum payment, the notary verifies the fact of depositing the appropriate sum of money in his/her deposit account. To do this, the parties submit to the notary a receipt of the deposit, which he/she examines and notes in the text of the contract.

With regard to the acknowledgment of the agreement on the payment of child support by its parents, the notary must verify whether such an

agreement determines the amount, terms, procedure for payment and grounds for the intended use of child support and whether these conditions do not violate the child's rights.

T. S. Andrushchenko's proposal to make changes to the Procedure "by which to provide the list of the documents which can confirm the facts of incapacity for work, in particular, the set of the signs defined by part 3 of Art. 75 of the Family Code of Ukraine, and the needs of the person. At the same time, the rule on confirmation of such facts should be provided for other cases of concluding child support agreements on such grounds in accordance with the Family Code of Ukraine" [1, p. 15].

The notary also explains the content of paragraph 2 of Art. 189 of the Family Code of Ukraine of January 10, 2002 [43] and states this in the text of the contract on the possibility of recovery of child support in an indisputable manner on the basis of a writ of execution, if one of the parents does not fulfill its obligations under the contract.

If the parents enter into a contract to terminate the right to child support in connection with the transfer of ownership of real estate, the notary certifies it only with the permission of the guardianship and trusteeship authority. Certifying this contract, the notary must verify the ownership of real estate to the

parent who alienates it, as well as verify the fact of family relations between parents and child.

Defining the list of documents required to certify the above-mentioned contract, the scientist T. S. Andrushchenko rightly notes that "given that the value of real estate should be sufficient to repay child support obligations, it is necessary to provide a document that determines the actual value of real estate" [2, p. 77]. However, then she talks about that "the notary verifies the ability of one of the child's parents to maintain this property, otherwise, according to the author, the rights and interests of the child will be violated" [2, p. 77]. It is impossible to agree with the last thesis, because the powers of a notary do not include determining the property status of a person and his/her ability to maintain property. In addition, the contract is voluntary, and if one of the parents is unable to maintain the property that is the subject of the contract, he/she may refuse to enter into such a contract.

4.8. Peculiarities of notarial proceedings for acknowledgment of other agreements.

With regard to notarial proceedings for acknowledgment of other agreements, it should be noted that when certifying other agreements, the notary must be guided by special regulations, taking into account the specifics of each individual agreement.

The third stage of notarial proceedings is the direct performance of a notarial act - an acknowledgment of contract, which ends with the issuance of a copy of a notarized contract to the parties. At this stage, the notary establishes the actual intentions of the parties of the contract for its conclusion; prints the text of the contract in at least two copies (or more, if necessary), one of which is set out on a white sheet, and the other on special forms of notarial documents; the parties, their representatives sign the contract; the notary makes a notary certification on the contract, on which he affixes his signature and seals it; as well as the notary registers the acknowledgment of the contract in the relevant paper registers, books and issues the original of contract to its parties.

Regarding the obligation of the notary to register the acknowledgment of contract in paper registers and books, in accordance with Art. 52 of the Law of Ukraine "On Notaries" "all notarial acts are recorded in the register for registration of notarial acts" [37]. It is from this moment that the notarial act is considered committed. In addition, information on the contract acknowledgment is entered in the relevant alphabetical book of contracts.

In the legal literature, some scientists believe that at this stage the notary should also register a notarial deed in the relevant electronic registers [44, p. 382; 18, p. 81]. Until 2013, the State Register of Transactions was in force, in which the notary was obliged to register all contracts certified by him/her. However, today this register does not work and information is not entered into it, and therefore this obligation of a notary does not apply to acknowledgment of contracts. As for the registration of forms in the Unified Register of special forms of notarial documents, inheritance agreement in the Inheritance Register, etc., it is the registration activity of a notary, which is carried out solely and independently of notarial activities.

In general, the stage of direct notarial action is the same for all types of contracts.

Acknowledgment of certain types of contracts, such as lifetime support contracts, mortgages, etc., entails the need to impose a ban. In accordance with paragraph 9, part 1 of Art. 34 of the Law of Ukraine "On Notaries" imposing a ban is a notarial act. Therefore, the imposition of the ban is not the final stage of acknowledgment of the contract. Acknowledgment of contract and imposition of a ban are independent notarial acts, each of them is performed in three stages, which were mentioned above.

There are also cases when the acknowledgment of contract is the basis for the state registration of the rights which have arisen from such contract. Thus, the acknowledgment of contract of sale, gift, etc. of real estate is the basis for the implementation by notary of state registration of ownership of the buyer. Although a notary who has certified such a contract is obliged by law to register the right of ownership, the state registration is not a notarial activity and is carried out outside the notarial process. This is a separate, independent of notarial, activity of the notary as a registrar. The situation is similar with the acknowledgment of contracts for the alienation of vehicles. The notary certifies the relevant contract and explains to the buyer his/her obligation to register the vehicle.

Notarial proceedings for the acknowledgment of contracts is one of the most responsible procedures for the performance of notarial acts, which takes place in three stages, has its own specific peculiarities compared to notarial proceedings for the performance of other notarial acts. The study of these peculiarities and their enshrinement in law is the key to the proper performance of the notary's duty to perform notarial acts, and hence - a reliable protection of the rights and interests of citizens.

Section 5.

NOTARIAL PROCEEDINGS FOR ACKNOWLEDGMENT OF THE POWERS OF ATTORNEY.

Notaries are very often approached with the performance of such notarial acts as certificates of power of attorney.

In small numbers, notarized powers of attorney are declared invalid in court.

Problems regarding the acknowledgment of powers of attorney by notarial and quasi-notarial bodies have been studied by many, both domestic and foreign scholars.

In particular, it should be noted the works of V. Komarov and V. Barankova, M. Dyakovich, Y. Zaika, N. Maidanyk, E. Fursa and S. Fursa, E. Kharitonov and O. Kharitonova, as well as many others as civilian scientists, and practitioners, including notaries.

The legislator provided for the concept of power of attorney in Article 244 of the Civil Code of Ukraine, in particular, in part three.

Thus, a power of attorney is a written document that is issued, as a rule, only by one person for another person for the purpose of representation before third parties [1].

That is, the attorney in no case receives rights to property, which according to the power of attorney, he/she, for example, alienates.

The main and direct task of the attorney is only to represent the interests of the principal. This gives the attorney the right to represent the interests of the principal, both in specifically specified by the principal institutions, legal entities and organizations, individuals, and before third parties. Thus, the attorney is endowed with the powers specified by the principal, which he/she (as a representative) must use and apply to represent the principal to third parties.

Since the power of attorney is a unilateral transaction, all the requirements of transactions, including unilateral, also apply to powers of attorney. These rules are established in Article 202 of the Civil Code of Ukraine (part three).

Also, the issue of acknowledgment of powers of attorney by public and private notaries is regulated by notarial legislation. Namely, the Law of Ukraine "On Notaries" and the Procedure for Notarial Acts by Notaries of Ukraine, in particular Chapter Four of Part Two entitled "Acknowledgment of Powers of Attorney, Termination and Revocation of Powers of Attorney".

We support the opinion of scientists who claim that when certifying a power of attorney, the principal

has the right to come only to the notary in person (both private and public) and not to invite an attorney to perform such a notarial act.

Accordingly, the notary is not entitled to require the presence of an attorney when certifying it, although, in some cases, it is advisable to provide the notary for review of copies of attorney's identity documents so as not to make a mistake in the power of attorney, so as not to cause refusal to perform the transaction by the attorney on behalf of the principal.

We also note that the issuance of a power of attorney by the principal is not an obligation of attorney to perform the powers under the power of attorney.

The attorney, as a representative of the principal, having received the document (power of attorney) must decide for him/herself:

- whether he/she accepts the power of attorney, i.e. agrees to perform the powers conferred on him/her by the principal,

- renounces the powers of the principal's representative.

The performance of the assigned powers is the right of the attorney in relation to the principal, not his/her duty.

It is obvious that principals and attorneys can be both individuals; legal entities, as well as individual-

entrepreneurs, in certain cases public formations, religious organizations.

It is obvious that public and private notaries of Ukraine certify powers of attorney, which are subject to mandatory notarization. However, at the request of the principal, notarial authorities have the right to certify powers of attorney that do not require a mandatory notarial form. Notarizing the power of attorney, notaries find out from the principal the scope of their powers to the attorney. Therefore, there are usually three main types of powers of attorney that the principal has the right to conclude.

Firstly, it is a power of attorney, according to which one action is carried out, which is called "one-time". An example of such a power of attorney may be a power of attorney to obtain a principal's diploma in a higher education institution. Secondly, it is a power of attorney, according to which the attorney performs one-time actions on behalf of the principal for a specified period (period). According to most scientists and practitioners, such a power of attorney should be considered special. An example of such a power of attorney is a power of attorney to receive a pension for 1 year. Thirdly, it is a power of attorney according to which the principal authorizes the attorney to perform various actions within the period (term) specified by the principal. According to Ukrainian scientists and

practitioners, this power of attorney is considered universal or general power of attorney.

The issue of the form of the power of attorney certificate is established in detail by the legislator in Article 245 of the Civil Code of Ukraine.

That is, in addition to powers of attorney certified by notaries (both private and public), officials of consular offices and diplomatic missions, there is an acknowledgment of power of attorney, which is clearly not a notarized power of attorney, but legislator equates them to notarized powers of attorney.

The issue of acknowledgment of equated powers of attorney to notarial ones is also established by the legislator by the relevant norm in Article 40 of the Law of Ukraine "On Notaries".

Thus, in the second part of the above article, the legislator equates to notarized powers of attorney, depending on the principals who are the subjects of the notarial process for the acknowledgment of notarial acts (in this case, powers of attorney) the following categories of individuals.

Firstly, the principals are only servicemen or other persons who are (are in treatment) in certain institutions, namely: hospitals, sanatoriums, other military medical institutions.

The above-mentioned powers of attorney (which are equivalent to notarial ones) have the right to

certify only officials designated by the legislator, namely: heads of hospitals and sanatoriums, as well as other military medical institutions: deputy heads of hospitals and sanatoriums, as well as other military medical institutions; senior or on duty physicians of the above-mentioned hospitals, sanatoriums and other military medical institutions.

Secondly, the principals are:

a) servicemen,

b) employees, members of their families, as well as members of the families of servicemen, who in turn are in the locations of: military units or formations, institutions and military educational institutions, if there is no notary in this locality (state or private), officials of local governments who have the right to perform certain notarial acts.

From the above-mentioned persons, powers of attorney, which are equated by the legislator to notarial ones, are certified by: commanders (or chiefs) of the above-mentioned military units or formations, as well as institutions or military educational establishments.

Thirdly, the principals are persons who are (kept) in penitentiaries, pre-trial detention centers.

The right to certify powers of attorney (which the legislator equates to notarized) from these persons have the heads of penitentiary institutions, heads of pre-trial detention centers.

It is worth noting that in a separate group, the legislator has allocated powers of attorney that are equivalent to notarized, the principals of which are persons living in localities where there are no notaries.

In this case, the right to certify power of attorney, equated to a notarized, is granted by the legislator to an authorized official of the local government.

At the same time, we emphasize that local government officials do not have the right to certify three categories of powers of attorney, namely:

Firstly, it is a power of attorney on behalf of the principal to dispose of real estate, Secondly, it is a power of attorney on behalf of the principal to manage, as well as the disposal of corporate rights, Thirdly, it is a power of attorney on behalf of the principal to use and dispose of vehicles which belong to the principal.

Acknowledgment of powers of attorney as the above-mentioned officials of local self-government bodies, as well as other notarial and quasi-notarial bodies is carried out in accordance with the requirements of the current Ukrainian legislation.

In our opinion, such normative legal acts should include the norms of the following legislative acts: the Civil Code of Ukraine, the Family Code of Ukraine, the Land Code of Ukraine, the Tax Code of Ukraine, the Forest Code of Ukraine, the Law of Ukraine “On

Notaries", as well as legal and regulatory bylaws, which should include the following: the procedure for notarial acts by notaries of Ukraine, the procedure for acknowledgment of wills and powers of attorney, which are equated to notarized, as well as other acts (legal and regulatory).

It should be reminded that when certifying powers of attorney, there are restrictions on the subjects of the notarial process who have the right to certify powers of attorney.

We emphasize that notaries (both private and public), officials who perform notarial acts equated to notarial, as well as officials of local governments, certifying powers of attorney, equated to notarized, do not have the right to certify the power of attorney in their own name and on their own behalf, in the name and on behalf of their husband or wife, his (her) and their parents, children, grandchildren, grandfather, grandmother, brothers, sisters.

We also note that in accordance with current Ukrainian legislation (part 2 of Article 245 of the Civil Code of Ukraine) the power of attorney by delegation can be certified only by notaries (private or public).

In this case, the term of the power of attorney by delegation may not exceed the term of the main power of attorney, i.e. the one on the basis of which it is issued.

Analyzing the provisions of Article 58 of the Law of Ukraine "On Notaries" and Article 244 of the Civil Code of Ukraine, we conclude that, unlike civil law, notarial law gives notaries the right to make and certify power of attorney from one person, from two or more persons, in the name of one person, in the name of two or more persons.

According to notarial practice, sometimes there are cases when it is necessary to make and certify a power of attorney for the sale of a car, and it is, for example, jointly owned by several children of the testator (heirs), which they inherited.

Therefore, if they, as car owners, wish to enter into a power of attorney for alienation, then the notary, guided by the provisions of Article 58 of the Law of Ukraine "On Notaries", has the right to certify such a power of attorney.

If the notary makes and certifies the power of attorney, it is done in two copies, one - is given to the principal, so that he/she subsequently handed over to the attorney the specified copy of the power of attorney.

If the power of attorney is equated to a notarized power of attorney, i.e. certified by such officials (Article 40 of the Law of Ukraine "On Notaries"), then this power of attorney is made only in one copy and issued to the principal. And the above-mentioned

officials who have certified such a power of attorney (equated to a notarized power of attorney) do not have a second copy.

It should be noted that there are certain transactions that a person must perform (commit) and certify only in person.

These include, for example, acknowledgment of will (only personally by the testator), filing an application (private or public notary) for acceptance of the inheritance only personally by the heir, registration of marriage through a representative is not allowed.

When a notary or an official certifies a power of attorney to donate property on their behalf, they must indicate the specific name of the donee in the text of such a power of attorney. Otherwise, that is, if such a name is not specified, such a power of attorney, in accordance with applicable law, is void.

The current legislation contains certain requirements for powers of attorney, both notarized and equated to notarized.

The legislator also defined the mandatory requirements for the text or content of the power of attorney - in subparagraph 2.5 of paragraph 2 of the fourth chapter of section III of the Procedure for notarial acts by notaries of Ukraine.

Thus, the power of attorney must contain:

place of making (power of attorney); the date of making (power of attorney); information about principals:

a) last name, first name, patronymic or name (full) of the legal entity,

b) place of residence of the principal,

b) location of the principal, if it is a power of attorney from a legal entity, as well as a representative.

If the power of attorney for a lawyer is certified, then it should be noted the place and date of making (power of attorney), last name, first name, patronymic, place of residence of the person, i.e. the principal; and the last name, first name, patronymic of the lawyer, the number and date of issuance to such a lawyer of a certificate of the right to practice law, as well as indicate the organizational form of his/her practice, including membership in a law firm.

Notary authorities, in particular, notaries must verify: the identity and legal capacity of the person wishing to certify the power of attorney.

When certifying a power of attorney, notary bodies, in particular notaries, must be guided by the provisions of Part 1 of Article 245 of the Civil Code of Ukraine.

That is, the form of power of attorney from the principal must correspond to the form in which the contract is to be made, in accordance with the law.

An example of this is that if the mortgage agreement from a notary in the future will certify on behalf of the credit institution, then the representative of the institution when concluding a mortgage agreement must present only a notarized power of attorney (to represent interests of concluding a mortgage agreement).

The principal independently determines the term of the power of attorney for which he/she authorizes the principal. This should have been indicated in the text of the power of attorney in letters. However, this period may not be exceeded than specified in the legislation.

If the term of the power of attorney is not provided in its text, then it is considered that it is not established. That is, such a power of attorney remains valid until its (power of attorney) termination (in accordance with Part 1 of Article 247 of the Civil Code of Ukraine).

If the principal has concluded an indefinite power of attorney to act abroad, then such a power of attorney is valid until the principal him/herself revokes it.

It should be noted that a power of attorney is void, when it does not contain in the text of the power of attorney - the date of making such a power of attorney.

Although, as a rule, the attorney him/herself must personally perform all the powers assigned to such a person by the principal.

If the attorney is unable to perform the powers assigned to him/her by the principal, he/she may delegate the performance of duties assigned to him/her by the principal.

However, delegation can be made only when in the text of the power of attorney the principal gave the attorney the right to delegate the actions specified by the principal, as well as when the attorney was forced to delegate the powers assigned by the principal to protect the principal's interests.

It should be emphasized that only public and private notaries can certify from the attorney a power of attorney to delegate the power of attorney to another person.

In this case, notaries who certify the power of attorney by delegation, must explain to the attorney, as a representative of the principal, the content of Article 240 of the Civil Code of Ukraine.

It is worth to emphasize that further delegation of powers in the future can no longer be done by an attorney.

In the content of the power of attorney by delegation, the text of the main power of attorney is actually indicated, because such a "secondary" power

of attorney cannot provide more rights than were delegated by the principal under the main power of attorney.

We also emphasize that the power of attorney by delegation cannot extend beyond the term of validity of the main power of attorney on the basis of which it was certified.

The text of the power of attorney issued by delegation, in addition to the mandatory requisites for the power of attorney, also provides requisites of the previous main power of attorney.

Namely, the date and place of certification of the above-mentioned main power of attorney, which notary certified it (personal data of the notary - surname, name and patronymic, notarial district), the registration number under which the notary registered main power of attorney, last name, first name, patronymic of the attorney to whom the principal has issued the power of attorney, as well as the place of residence of the attorney to whom the principal has issued the main power of attorney, last name, first name, patronymic, and place of residence of the person to whom attorney on the basis of the main power of attorney delegates powers.

A private or public notary, when certifying a power of attorney by delegation, is obliged to make a

note on the copy of the main power of attorney about the certified power of attorney by delegation.

The notary is also obliged to add a copy of the main power of attorney to the copy of the power of attorney, which remains in the notary's materials.

If the attorney under the main power of attorney wishes to re-certify the power of attorney by delegation from the same notary, then the notary has the right not to leave a copy of the main power of attorney.

The legislator gave the principal (the person who issued the power of attorney) the right to cancel the power of attorney and the attorney at any time, the right to cancel the power of attorney by delegation.

In Article 248 of the Civil Code of Ukraine, the legislator establishes the grounds for termination of representation by a certified power of attorney.

Such grounds include: firstly, the expiration of the term, i.e. the term of the power of attorney, and in the case of a one-time power of attorney - the realization by the representative of all actions that were set for him/her; secondly, it is when the person who issued the power of attorney revoked it him/herself. This right is granted to a person by law.

Revocation of the power of attorney is possible by the person who issued it.

However, an irrevocable power of attorney cannot be revoked.

Thirdly, it is the refusal of the person to whom the power of attorney was issued to perform the powers assigned to him/her by the principal.

Fourthly, it is the termination of the legal entity that issued the power of attorney.

Fifthly, it is the termination of the legal entity in whose name the power of attorney was issued.

Sixthly, it is the death of the citizen (principal) who issued the power of attorney, as well as the recognition of the principal incapacitated, or partially incapacitated or missing.

Seventhly, it is the death of the attorney, i.e. the citizen to whom the power of attorney was issued, or the recognition of the attorney as incapable, or partially incapacitated or also missing.

To revoke a notarized power of attorney, the principal must apply to a notary, including the one who certified the power of attorney, with an application of revocation of the power of attorney (certified by him/her), and notify, first of all, the attorney, i.e. the person to whom the power of attorney has been issued, as well as to other third parties known to the principal, for representation before whom the power of attorney has been issued by the principal.

Section 6.
NOTARIAL PROCEEDINGS FOR ACKNOWLEDGMENT OF WILLS

The acknowledgment of wills in Ukraine is not as common as in other European countries, such as the United States.

Analyzing the legislative concept of the will, it is necessary to identify its main components.

Firstly, a will is a personal order of an individual. Secondly, it is an order in case of his/her death. Thirdly, it is a written order. Fourthly, it is an order stating: place of making and time of making. Fifthly, the will is certified by notarial bodies: public or private notary, as well as officials established by current law.

Only the testator him/herself can personally make his/her will and certify it in notarial bodies. The person (testator) is not entitled to authorize a representative.

Notarial bodies that have the right to certify wills are provided in the current legislation, in particular the Civil Code of Ukraine (Article 1247, as well as 1251 - 1252). The same norms are contained in

the Law of Ukraine "On Notaries".

Analyzing the legislation, we come to the conclusion that there are three main types of wills: ordinary will, will in solemn form, mystic will. The rules for making an ordinary will are provided in Article 1247 of the Civil Code of Ukraine. These include: a will is made in writing; its text indicates the place and time of the will. In the text of the will, the testator has the right: to dispose of all his/her property in general, to dispose of part of the property, to dispose of a specific type of property, to bequeath to one or more individuals and legal entities, including public and religious organizations, as well as a certain territorial community or state.

The procedure for concluding wills with the participation of witnesses is regulated in accordance with the requirements of Article 1253 of the Civil Code of Ukraine. Analyzing the norms on the acknowledgment of wills with the participation of witnesses, it is seen that there are two types of acknowledgment of such wills.

In particular, this happens when the testator him/herself wants it. Otherwise, the legislator establishes the mandatory presence of exactly two witnesses when certifying the will, in accordance with the requirements of Articles 1248 and 1252 of the Civil Code of Ukraine.

We remind you that a notary makes and certifies wills only from individuals who have full civil capacity. Notaries also have the right to make and certify a will on behalf of the spouses, as well as on behalf of each spouse. When making such wills, notaries are guided by the provisions of Articles 1233 - 1257 of the Civil Code of Ukraine. We remind you that the testator is also not entitled to make a will with the help of a representative or representatives.

Analyzing the civil legislation, as well as notarial legislation, in particular, the Procedure for notarial acts by notaries of Ukraine. Before making and certifying a will, either a public or private notary or other bodies such as local self-government bodies and consular offices or officials who are equated with notarized, must explain to the person who intends to make a will his/her following rights:

Firstly, make a will in favor of one or more persons. It does not matter whether such a person is his/her heir at law, or another person at all, or a legal entity, state, religious organization, etc.

Secondly, when making a testamentary disposition for different heirs, the testator must indicate the shares to each separately.

Thirdly, the testato1r can make a will for:

a) all the property belonging to him/her, b) part of the property belonging to him/her, c) can bequeath

things of home furnishings and consumer separately, d) property that will become the property of the testator in the future and will be entitled to the day of the testator's death.

Fourthly, the testator has the right to deprive the right to inherit one or more or all of his/her heirs by law, as indicated in its text.

Fifthly, the testator has the right to make a testamentary disclaimer, or to make a legacy.

Sixthly, the testator can name an executor of the will. However, this requires the consent of the executor of such a will. It (the consent of the executor of the will) can be implemented in practice in two cases.

First of all, when the executor of the will is present at the making of the will with the appointment of the executor. And also, when the executor of the will goes to the notary and certifies the consent on the application that he/she gives the consent to his/her appointment as executor of the will of such citizen.

And the last important rule, according to which the testator has the right to change the will made by him/her at any time; cancel the will made by him/her, upon making and notarizing a new will.

The testator is also given the right to cancel the will made earlier by him/her. The legislator establishes the circle of persons who are not entitled to make and

certify wills. This list includes adults who have been declared legally incompetent.

Practice shows that in most cases, these are people who are not able to understand the meaning of their actions and (or) control such actions due to chronic and persistent psychological disorders. Nor can adults with limited civil capacity make wills, in accordance with court decisions, for example, due to abuse of both alcoholic beverages and drugs, as well as toxic substances, etc.

It should be noted that when making and certifying a will, the testator must not present to notaries public or private, officials of territorial communities, or officials certifying equivalent to notarized wills, documents proving that he/she owns the property bequeathed.

As a rule, the notary makes and certifies wills by technical means and presents the text of the will on special forms of notarial documents. That is, the notary writes the text of the will from the words of the person making the will. However, we emphasize that the will must be read by the testator aloud, and also confirmed by him/her that from his/her words the will was made correctly by a notary. The testator must write about this in the text of the will.

Since wills have been registered in the Inheritance Register since 2000, in accordance with the

Regulations on the Inheritance Register, a public or private notary or an official of a territorial community, another official (listed in Article 40 of the Law of Ukraine "On Notaries"), an official of consular offices and diplomatic missions is obliged to indicate the date and place of birth of the testator in the content (text) of the will.

The above-mentioned notarial and quasi-notarial bodies must indicate in the will, in addition to the above-mentioned, the date and place of birth of the testator, the place and time of the will.

The obligatory requirement to certify the content of the will is that the will must be personally signed by the testator.

In case of impossibility to sign the will by the testator personally due to his/her physical disability and illness or for other reasons, then, on behalf of the testator, such a will may be signed by another individual. However, such an individual, in whose favor the testator bequeaths property, may not sign a will for such a testator.

Both private and public notaries, as well as other quasi-notarial bodies, when certifying a will, must explain to the testator:

- that the right to a mandatory share in the inheritance have "mandatory heirs" (the list of which is

established in Article 1241 of the Civil Code of Ukraine),

- that the will does not apply to the property which is the subject of the inheritance agreement (according to Article 1307 of the Civil Code of Ukraine), i.e. the will in relation to the bequeathed of such property is null and void.

And lastly, if there are witnesses when making and certifying the will, there must be two of them, and the latter must have full civil capacity. There are rules for witnesses when making and certifying the will, namely that such persons cannot be: firstly, notaries, secondly, both family members and close relatives of testamentary heirs, and thirdly, persons in whose favor the will was made, fourthly, those persons who cannot read or sign the will themselves.

O. E. Kukharev is right, who claims that witnesses involved in the process of certifying a will must certify:

a) that the testator, at the time of both the making and certifying the will, really understood the meaning of his/her actions and could manage his/her actions. According to the scientist, this fact is established by witnesses only visually;

b) that the testator in their presence expressed his/her true will. As well as the fact that the testator

was not subjected to both mental and physical influence;

c) that the testator: personally signed the will or if he/she due to health cannot sign it him/herself, then at the request of the testator such a will was signed in his/her (testator's) presence by another person [24, p. 109].

It should be reminded that in the will with the participation of witnesses, both private and public notaries, as well as other quasi-notarial bodies, must indicate the first name, patronymic of the witness (who participates in the making of the will), date of birth of the witness, place of residence of witnesses , as well as indicate the details of the passport or other document on the basis of which these notarial authorities have identified the witness.

Please note that witnesses to the will must read the will aloud in the presence of the testator and the notary, as well as sign the text of the will. We emphasize that the witness is liable for the damage caused by him/her (witness) as a result of his/her disclosure of information (about the will), which became known to him/her in connection with his/her participation in the making of the will, in the manner prescribed by law.

It should be noted that the text of the will must be clear and unambiguous, so that in the event of the

testator's death there are no misunderstandings or disputes, so that it is possible to formalize an inheritance without conflict.

In our opinion, a notary (both private and public) before certifying a will should check whether the certified will does not contain such orders that contradict the requirements of current legislation of Ukraine.

We emphasize that according to the will, the testator's property can be bequeathed by him/her only in ownership. However, the testator has the right to impose on several heirs or one heir to whom the house, immovable or movable property passes or is transferred, the obligation that the house, immovable or movable property is provided to another person, and namely: the right to use the specified property or a certain part of the above-mentioned property.

The legislator also gives the right to a public or private notary, official (consular offices, local governments, diplomatic missions, as well as others listed in Article 40 of the Law of Ukraine "On Notaries") to certify a will with a condition.

The conditions that the testator may specify in the will include:

Firstly, it is the presumption that a certain heir has the right to inherit, which is assigned in the will made by the testator, only if there is a certain condition

that may or may not be related to the conduct of such an heir. Examples of such a condition may be: the residence of such an heir in a particular place or the presence of other heirs, as well as education (it is possible to specify which one), the birth of a child, and so on.

Secondly, the testator may include in the will an order of a non-material nature. An example of such an order may be:

- as determining the place and form of the ritual of burial of the testator, and the establishment of a monument (tombstone) of a certain size and shape;

- the testator's wish that the heir should assigned with a custody of a minor,

- the implementation of certain actions that must be aimed at the heir to achieve a certain socially useful purpose, and so on.

Please note that the condition stipulated by the testator in the will must exist at the time of the opening of the inheritance. However, if such a condition contradicts the law or the moral principles of society, then such a condition is null and void.

According to notarial practice, mystic wills have not found their mass distribution.

Private and state notaries, when certifying mystic wills, do not have the right to get acquainted with the content of such a will.

However, notaries should explain to the testator that the text of the mystic will should be written clearly and unambiguously, so that the testator's order in case of death does not cause any ambiguity or controversy after the testator's death, when opening the inheritance.

The mystic will is submitted by the testator, personally to a public or private notary in an envelope sealed by the testator.

It is desirable that the testator signs the envelope (which contains the text of the will) in his/her own hand in the presence of a public or private notary.

If the testator signed the envelope with the will not in the presence of a notary, then the testator must personally confirm to the notary that he/she signed the envelope him/herself.

After that, the public or private notary makes, on the envelope brought by the testator, which contains a mystic will, and which is signed by the testator, a notary certification that the notary has certified and accepted for storage such a mystic will. It is sealed by a public or private notary and, in the personal presence of the testator, places the mystic will in an envelope in another envelope, and then seals the last envelope.

On the envelope, the notary (public or private) shall indicate the last name, first name and patronymic of the testator, the date of birth of the testator, as well

as the date of acceptance for safekeeping of the specified mystic will.

We should note that a mystic will is accepted by a notary (public or private) for safekeeping by a notary without a description.

As it has been already mentioned, mystic wills are not very common in Ukraine. It is worth noting that there is a problem with the announcement of the contents of the mystic will. Practicing notaries offer to solve the problem as follows: when a public or private notary witnesses the testator's signature on a mystic will (on the envelope in which it is placed), he/she (the testator) is offered in addition to the will, on a separate sheet, set out a list of persons who should be present at the announcement of the will by a notary.

In our opinion, it is worth focusing on the procedure of announcing a mystic will.

Only in the case of receiving information about the testator's death on the basis of his/her death certificate, a public or private notary, who keeps a mystic will on behalf of the deceased, must appoint a day to announce the contents of such a will.

In this case, the specified notary informs both about the day and time of announcement of the contents of the will the following persons: family members of the testator and his/her relatives, if the notary knows the residence of the above-mentioned

persons, and makes notifications or announcements in print mass information about the time and place of the announcement of the will made by the deceased.

The procedure for announcing the will requires the presence, in addition to family members and relatives of the deceased, as well as other interested persons, of two other witnesses. Only in the presence of the specified persons, the notary may open the envelope in which the notary of the specified testator kept the will and announces the contents of such a will.

Procedurally, this is done by making an appropriate protocol on the announcement of the will. This protocol must be signed by both the notary and the witnesses present.

The Procedure for performing notarial acts sets the details that the notary must indicate in the protocol on the announcement of the mystic will. Namely:

- date, time and place of making the protocol on the announcement by the notary of the mystic will of the testator;

- date of acknowledgment, as well as acceptance by a notary for safekeeping of a mystic will;

- the notary indicates last name, first name, patronymic of those persons who were present at the announcement of the mystic will, including witnesses;

- the notary must indicate the information about the notification of persons who still did not appear for

the announcement of the mystic will by the notary, or the information about the notification of the notary in the print media about the future announcement of the mystic will;

- the notary analyzes the state of the testator's will, including: the presence of crossed out by places or amendments, as well as other imperfections;

- the notary indicates the condition of the envelope in which the mystic will was kept,

- the notary writes down in the protocol all text of the will.

If from the analysis of the text of the mystic will made by the deceased, is impossible to determine his/her will to dispose of property and determine the heirs, then the notary is obliged to reproduce in the protocol "interpreted by the heirs text of the will" of the deceased, as well as information on whether or not an agreement has been reached (or not reached) between the heirs of the deceased on the interpretation of the text of the said mystic will.

Also, in the text of the protocol on the announcement of a mystic will, the notary provides that he/she warned the witnesses about the responsibility for the damage they will suffer in case of disclosure of information that became known to them (witnesses) in connection with the announcement of this mystic will.

The legislator gives notaries the right to indicate in the text of the protocol other significant and important circumstances of the announcement of the will. We emphasize that the mystic will, after its announcement by the notary, remains in the materials of the same notary.

If the interested person in the announcement of the mystic will was duly notified by the notary of the day of the announcement of the mystic will, but did not come to the announcement of the mystic will, then the notary still announces the contents of the mystic will of the deceased to those who appeared on such an announcement.

If the interested person came to the notary after the announcement of the will, the latter acquaints the interested person with the protocol of the mystic will, and must make a note, which is also signed by the interested person.

According to current legislation, mystic wills are kept by public or private notaries in a separate package, which is placed in iron cabinets or safes. The legislation emphasizes that it is not allowed to file mystic wills by a notary, until they are announced, in separate orders.

Applying the norms of Article 1243 of the Civil Code of Ukraine, the spouses are given the right to make a reciprocal will. However, under such a will, the

spouses may appoint heirs to objects of certain joint ownership only. From the analysis of the current Ukrainian legislation, the will of the spouses has certain peculiarities of the notarial acknowledgment.

Thus, the specifics of making and certifying the will of the spouses is as follows bequeathed by will of the spouses can only be property that was jointly owned; to receive hereditary property by will of the spouses should only such a person (heir), which is determined by the spouses (both) by agreement between them; it should be noted that the spouse who has survived another member of the spouse, continues to live in the usual for him/her (the spouse) property environment.

Please note that in case of death of one of the spouses, his/her share in the inherited property (which belonged to the deceased spouse) is not included in the total inheritance, but such a share passes to the other spouse (survivor).

The legislator also established a rule according to which a surviving spouse is not entitled to alienate property that was jointly owned by the spouses (both), as well as the object of a reciprocal will.

Please note that the heirs of such a will of spouses will only be the persons listed in their will (reciprocal will of the spouses), however, they (heirs of

the will of the spouses) will be able to take possession of the property only after the death of both spouses.

We emphasize that the legislator, in part 3 of Art. 1243 of the Civil Code of Ukraine, gave the right to the spouses, only for the life of both of them, to refuse the reciprocal will of the spouses to both husband and wife. However, such a refusal must be notarized.

In this case, the application for refusal of the will of the spouses should apply to the entire reciprocal will, and not cancel the will of the spouses in a certain part of it. In our opinion, it would be expedient for such a reciprocal will of the spouses to be revoked by both its members, the husband and the wife, on a joint application, the signatures of which are witnessed by public or private notaries.

It is worth noting that the notarial practice of certifying reciprocal wills of the spouses has not become widespread. In practice, there are cases when in the event of the death of one of the spouses, the other (the surviving spouse), if they are elderly, want to arrange their personal life in the future and therefore change their mind about the future heir.

Public and private notaries, when certifying a reciprocal will, must tell them in detail about the possible consequences in the future, in particular in the event of the death of one of the spouses, and invite the

couple to think carefully before making a reciprocal will. Most of the spouses still make separate wills for the part of the property that the spouses have acquired during their stay in a registered marriage.

We agree with the opinion of N. Vasilina that in case of divorce, the former spouse is not deprived by the legislator of the opportunity to retain the right to preserve their reciprocal will of the spouses regarding the property that is their joint property [7, p. 111].

Information about all certified wills is subject to mandatory state registration in the Inheritance Register by public and private notaries. This is done in accordance with the requirements of the Regulations on the Inheritance Register, which was approved by the order of the Ministry of Justice of Ukraine dated July 7, 2011 with the following changes.

Following the norms of paragraph 2.1.1 of the Regulations on the Inheritance Register, the registrar shall enter the following information into the Inheritance Register:

- concerning the testator (and in case of the certificate of the reciprocal will of spouses - testators);

- last names and first names, patronymic (if any) of the testator or testators;

- registration number of the taxpayer's account card in accordance with the State Register of Individuals - Taxpayers or the reason for its absence;

- place of residence of the testator / testators, or their location;

- date and place of birth of the testator or testators. If the place of birth is not known, then the notaries indicate the name of the country.

Thus, since this information must be entered in the Inheritance Register, they must be indicated by a public or private notary, as well as other quasi-notarial bodies in the text of the will.

The legislator has established a special procedure for revoking notarized wills.

This procedure for revocation of a power of attorney may be made only by a notary (public or private) where the revoked will is in custody, in particular, it may be a private notary, a state notary of a notarial archive and a state notary of a notary office where the will is located.

A state or private notary, who became aware of the existence of a previously made will during the making and certification of a will, notifies the state notarial archive, private notary, state notary office, local self-government body of the notarial act performed (revocation of the power of attorney).

The legislator has established a special procedure for revoking a mystic will.

Private notary, state notary of the state notary office or head of the state notarial archive upon receipt

of the application for revoking of the mystic will, as well as in case of a new will make a note in the register for registration of notarial acts, alphabetical book of wills.

If the testator submits to the state or private notary a copy of the certificate of acknowledgment and acceptance for safekeeping of the mystic will, the public or private notary shall make an inscription on the revocation of the will also on this copy of the above-mentioned certificate of acknowledgment and acceptance of the mystic will, after which it together with the application (when the will is revoked by the application) is attached to the copy of the certificate of the above-mentioned, which is kept in the files of a private notary, state notary office or in the state notarial archive.

If the testator him/herself under a mystic will wishes to revoke it, he/she shall apply in writing to a public or private notary.

The notary must return to the testator the envelope signed by him/her, in which the mystic will is kept.

We emphasize that the authenticity of the testator's signature on the application for revocation of a mystic will must be witnessed only by notary.

Section 7.
PECULIARITIES OF NOTARIAL PROCEEDINGS FOR ACKNOWLEDGMENT OF FACTS

Other actions that notaries of Ukraine have the right to perform, as well as officials of consular offices and diplomatic missions, include an acknowledgment of facts.

Thus, in accordance with the Procedure for notarial acts by notaries of Ukraine, public and private notaries have the right to certify the following facts (in notarized order):

a) that the individual being alive,

b) that the individual is in a certain place,

c) time of presentation of the document.

Only upon oral, as a rule, personal application of an individual, a public or private notary certifies the fact that such an individual is alive.

Similarly, public and private notaries, at the oral and personal request of an individual certify the fact of his/her (such person's) stay in a certain place.

The legislator gives the right to a notary to certify the fact that an individual is alive, as well as the fact that such a person is in a certain place in two ways.

Firstly, it is carried out by a notary when an individual appears in person at the premises of a private notary or at the premises of a state notary office where such a public notary works.

Secondly, public or private notaries also have the right to certify the above facts outside the premises of a state notary office or the workplace of a private notary.

It should be emphasized that the facts about whether an individual is alive when it concerns a minor or an incapacitated individual being alive are notarized only by the oral request of the legal representatives of these persons, such as parents, adoptive parents or guardians.

The procedure is similar when a notary certifies the fact that a minor or incapacitated individual is in a certain place.

At the same time, we note that when certifying the above facts, notaries establish the identity of citizens (both minors and their legal representatives).

Relevant certificates are issued by the notary to confirm the facts about the finding of an individual alive or the fact of his/her stay in a certain place.

The procedure for performing notarial acts by notaries of Ukraine establishes the content of the above-mentioned certificate of finding a person alive, namely:

- place and time of issuance of the certificate on finding an individual alive;

- last name, first name, patronymic of a public or private notary who issues the relevant certificate;

- last name, first name, patronymic of the citizen who applied to a public or private notary to confirm the fact that he/she is alive;

- place of residence or stay of a citizen who has applied to a public or private notary to confirm the fact that he/she is alive;

- place, as well as the circumstances under which the public or private notary has ascertained that the individual is alive:

a) personal application of such person to a public or private notary,

b) in a hospital where there is a person who wants a public or private notary to confirm the fact that such a person is alive;

c) in places of imprisonment, where there is a person who wants a public or private notary to confirm the fact that such a person is alive;

d) at home, i.e. in an apartment or a house where a person who wants a public or private notary to confirm the fact that such a person is alive;

- in the text of the certificate, the state or private notary indicates the establishment by such notary of the identity of the citizen to whom the certificate is issued that the individual is alive;

- number according to the register, according to which the certificate was registered that the person is alive;

- information on the payment of state duty, if the certificate is issued by a state notary and the amount of the fee collected, if the certificate is issued by a private notary;

- imprint of the notary's seal (public or private);

- signature of the public or private notary who issues such a certificate.

Also, the normative legal act establishes the content of the certificate on the fact of a person's stay in a certain place, namely:

- personal appeal of such a person to a public or private notary so that the notary confirms the fact that this person is in a certain place;

- we pay attention to the indication by the public or private notary of the exact time of issuance of the certificate on the fact of stay of the person in a certain place, i.e. hours and minutes;

- the place of issuance of a certificate on the fact of a person's stay in a certain place, namely: the notary indicates the exact address of the workplace of a private notary, and the public notary - indicates the location of the state notary office, and in case when the notary went on call in order to issue the fact of the person's stay in a certain place:

a) in a hospital, where there is a person who wants a public or private notary to confirm the fact that such an individual is in a certain place, namely in the hospital where the address of the hospital will be indicated;

b) in places of imprisonment, where there is a person who wants a public or private notary to confirm the fact that such an individual is in a certain place, namely in the place of imprisonment where the address of the place of imprisonment will be indicated;

c) at home, i.e. in an apartment or a house, where there is a person who wants a public or private notary to confirm the fact that such an individual is in a certain place, i.e. at home and indicate the postal address of the apartment or house;

- last name, first name, patronymic of a public or private notary who issues the relevant certificate on the fact of a person's stay in a certain place;

- last name, first name, patronymic of the citizen who applied to a public or private notary to confirm the fact that he/she was in a certain place.

- in the text of the certificate, the state or private notary indicates the establishment by such notary of the identity of the citizen who applied to the notary for confirmation of the fact that he/she was in a certain place;

- number according to the register, according to which the certificate of confirmation of the fact that he/she was in a certain place was registered;

- information on the payment of state duty, if the certificate is issued by a state notary and the amount of the fee collected, if the certificate is issued by a private notary;

- imprint of the notary's seal (public or private);

- signature of the public or private notary who issues such a certificate.

Both a certificate of finding a person alive and a certificate confirming the fact that a person is in a certain place are made by a public or private notary in two copies. One is issued to the person who applied for such a certificate, and the other remains in the files of a public or private notary.

It should be noted that the normative act also provides for a separate form for the issuance by public

or private notaries of a certificate certifying the fact that a minor is alive or in a certain place.

In addition to the above-mentioned requisites, in such certificates, notaries, both public and private, must indicate: last name, first name and patronymic of the legal representative (of a minor), as well as his/her status (i.e., parent, guardian or trustee), and also information on the identification of these representatives.

Normative and legislative acts, including Article 83 of the Law of Ukraine "On Notaries", give the right to public and private notaries to certify the time of presentation of the document only upon the oral request of the person concerned.

In this case, the public or private notary must personally familiarize him/herself with the contents of the document presented to him/her.

According to notarial practice, individuals apply to public and private notaries for various documents. For example, such documents may be: theses; descriptions of inventions, business trip certificates, various literary works and more.

In order for a public or private notary to certify the time of presentation of the document, he/she must first establish the identity of the applicant, and only then record the time of application.

To confirm the time of presentation of documents, a public or private notary makes a notary certification on the document itself and indicates the person who presented it to the notary.

In case of simultaneous presentation of several documents to a public or private notary, the notary makes notary certifications on each of the presented documents.

Also, there (on the document) the public notary indicates the amount of the collected state duty or the private notary indicates the amount of the fee for the notarial act, in particular for the each presented document separately.

However, when a public or private notary has been presented with a document made on several sheets, then the notary, when making a notary certification on such a document, must sew the document and seal it.

Section 8.
NOTARIAL PROCEEDINGS OF AN ANCILLARY NATURE

8.1. Notarial proceedings for certifying the authenticity of copies of documents and their extracts.

It is worth noting that until recently, certifying the authenticity of copies of documents and their extracts was one of the most common notarial acts performed by notaries of Ukraine.

Analyzing the provisions of the Law of Ukraine "On Notaries" (including Articles 37, 38, 75), notarial bodies, in particular, public and private notaries, officials of consular posts and diplomatic missions, as well as officials of local governments who are authorized to commit notarial acts, have the right to certify the authenticity of copies of documents issued by enterprises, institutions and organizations, only if the above documents do not contradict the law, have legal significance, as well as the fact that certifying the authenticity of such copies is not prohibited by law.

Before certifying the authenticity of copies or photocopies of documents, a public or private notary is obliged to read the original document and provide it with a proper legal assessment.

When certifying the authenticity of copies of documents issued by legal entities, public and private notaries must verify whether such documents meet the following conditions:

- compliance of the presented documents with the law;

- the presented documents have legal significance;

- certification by a private or public notary of the authenticity of copies of such documents is not prohibited by law.

For example, documents that contain illegal content or their content will insult the honor and dignity of an individual (citizen), as well as the business reputation of a legal entity are considered to be inconsistent with the current law. Also, all documents concerning the rights and legitimate interests of both individuals and legal entities have legal significance, regardless of whether such documents indicate the existence of certain legal relations in the past or present, because they can confirm the legitimacy of certain claims, as well as existence of certain facts, etc. [30, p.183].

It should be noted that the authenticity of a copy of a document issued by a citizen, i.e. an individual, is certified only in cases where the authenticity of the signature of the citizen (individual) on the original of such a document was witnessed by:

- notary (public or private),
- an official of a local self-government body,
- an official of a consular office or diplomatic mission,
- an enterprise, institution, organization where this citizen works, or studies, or lives or is treated.

In this case, notaries, as well as other bodies that have the right not to certify the authenticity of a copy or photocopy of the documents on the basis of which the relevant institutions issued the original document. An example is a child's birth certificate or a medical certificate of person's death. The same happens in the case of certification the authenticity of a copy or photocopy of the diploma supplement, without presenting to the notary personally the main document - the diploma.

In this case, public and private notaries and local government officials, as well as consular offices have the right to certify the authenticity of a copy of a copy of the document if the authenticity of the original copy was notarized or if the copy was issued by the

institution or the organization that issued the original document.

In the latter case, such a copy of the document must be set out on the form of a given institution or organization, and on which there is a mark "the original document is in the institution or organization" that issued the copy.

We emphasize that the authenticity of a copy of a copy of a court decision or its extract can be certified by a notary only if there is a mark on the copy of the court decision that the decision has entered into force, and that the original decision is in court, indicating the court case number.

It should be noted that notaries certify copies of official documents issued by the state registration of civil status and which are planned to be used by persons outside Ukraine, only after these documents are legalized or in accordance with the law, an apostille will be affixed.

A public or private notary has the right to certify the accuracy of the extract only if it is made from a document that contains the decisions of several unrelated issues. Note that the extract must fully reproduce the text of the part of the document on a particular issue.

In this case, a public or private notary may not certify the authenticity of a copy of documents

containing cleanups and additions, as well as unconditional corrections and crossed out words.

We emphasize that public or private notaries do not accept documents for notarial acts, including not certifying copies of documents, written in pencil, containing indistinct and illegible text, as well as erased or illegible or unreadable seal imprint.

Private and public notaries cannot certify the authenticity of a copy of a document consisting of several sheets, which are unnumbered and unsewed.

Also, when certifying copies of a document, a private and public notary must establish whether the proper authority issued the document itself, a copy of which is notarized, and whether such a document has all the available requisites.

If the document presented by a person raises doubts of a public or private notary, such a notary has the right to send the document for examination.

In this case, the public or private notary makes a decision to send the document for examination with a detailed statement of the circumstances that prompted the notary to such a decision, as well as a list of issues that require an expert opinion.

If a public or private notary finds that a copy of a document is incorrect or illiterate, then such a notary shall offer the person who applied to him for

certification of the copy to correct the copy of the document or make a new one.

At the request of the person concerned, a private or public notary may make a copy of the document him/herself.

A private or public notary before certifying the copy of the document is obliged to personally verify it with the original or an extract from the document which he/she certifies.

Please note that a notarized copy must contain:

- the exact text of the original document,
- the text of the notary's certification about certifying the authenticity of the copy,
- the notary indicates the absence or presence of properly stipulated corrections in the original document, as well as other peculiarities (the signature of the person who signed such a document, as well as the seal is not reproduced, but replaced by the words "signature" and "seal"),
- signature of a notary,
- name of the state notary office,
- seal of a private notary or state notary office (with the appropriate number).

In a copy of documents, which consist of several sewed sheets, their number is certified by the signature of a private or public notary, as well as the addition of the seal used by this notary.

8.2. Certifying the authenticity of translation.

There are two ways to certify the authenticity of translation.

Private or public notaries certify the authenticity of the translation of a document from one language to another, if they know the relevant languages.

If the public or private notary does not speak the relevant languages (or one of them), then the translation of the document can be done by a translator, and the notary only actually certifies not the correctness of the translation, but only the authenticity of the translator's signature.

Certifying the authenticity of the translation, a public or private notary establishes the identity of both the applicant who provided the document for translation and the identity of the translator.

In addition, the notary must be provided with a document confirming the translator's qualifications.

In this case, if the document from which the translation is made, was issued by public authorities of other states, the translation of the document, as well as certification of the translation is carried out by public or private notary only if such a document has marks on its legalization, i.e. requires a consul or consular office

mark that the document corresponds to the legislation of the country where it is issued, as well as that the signatures of officials on such a document do not call into question their authenticity.

At the same time, a mark on the legalization of such a document is not required if there is an agreement between Ukraine and the relevant state.

It is worth noting that the translation of the text of the document can be done in two ways.

If during the performance of a certain notarial act (acknowledgment of contract, certificate of authenticity of a copy) the notary also translates it into another language, then the translation is placed by the notary next to the original contract, copy, etc. on one page, separated by a vertical line so that the original text of the document was located on the left side, and the translation of the document - on the right side.

Please note that the translation must be made from the text of the entire document being translated and end with signatures. Below the text of the translation is the signature of the translator who translated the text.

Please take into consideration that the notary certification by a public or private notary is made under the texts of the document and the translation from the specified document.

The translation can also be made by a notary on a separate sheet of paper from the original or a copy. The notary then attaches the translation to the original document, which is sewed and sealed with the signature of the public or private notary and his/her seal.

During the notary's entry in the register for registration of notarial acts, the main requisites and a summary of the translated document, as well as information on the legalization of the document (if applicable) are indicated.

8.3. Witnessing by public and private notaries the authenticity of the signature on the documents.

A public or private notary, an official of consular offices and diplomatic missions, or an official of a local self-government body, as well as the head of a penitentiary institution have the right to witness the authenticity of the signature on documents, which content should not contradict the law and do not have the nature of agreements, and also do not contain information that insults the honor and dignity of person.

Thus, the above-mentioned notary bodies when witnessing the authenticity of the signature on the documents must establish the following circumstances: the content of the document, which should not contradict the law; the document must not contain information that insults the honor and dignity of person; the document does not have the nature of transaction.

We note that in a transaction a private or public notary may witness the authenticity of the signature of a person who signed for another person, because he/she could not do it him/herself due to a physical defect or illness or for other valid reasons.

In this case, the public or private notary establishes the identity of both the signatory and the person for whom this citizen signed. Officials of consular offices and diplomatic missions, officials of local self-government bodies, as well as public and private notaries, witnessing the authenticity of the person's signature, thus do not certify the facts set out in the document, but only confirm that the signature was made by a certain person in the presence of the above-mentioned notarial bodies.

The legislation of Ukraine provides for only one exception to this rule, namely: when the authenticity of the signature on the document can only be witnessed by a public or private notary if such a document was intended for submission by a person to the competent authorities of another state.

It should be noted that when a state or private notary certifies samples of signatures of officials of certain legal entities on cards submitted to the National Bank of Ukraine, as well as commercial banks for the purpose of opening accounts, public or private notary checks: legal capacity of the legal entity; authenticity of signatures of officials; authority of officials to sign.

To confirm his/her authority regarding the right to sign cards submitted to the National Bank of Ukraine, as well as commercial banks for the purpose of opening accounts, a person submits to a public or

private notary: an order appointing him/her to office, a protocol on the election of an official, a power of attorney addressed to the manager, which is issued by the highest governing body of the legal entity, etc.

In case of technical possibilities of work with electronic documents, the state or private notary witness the authenticity of the electronic digital signature on the specified documents, and also makes the corresponding notary certification.

8.4. Notarial proceedings for the transfer of applications.

According to Article 84 of the Law of Ukraine "On Notaries", the transfer of applications of individuals and legal entities to other individuals and legal entities occupies a certain niche in the performed notarial acts.

As a rule, these are applications concerning the property interests of the persons who submit such applications.

We note that when submitting applications, public and private notaries establish that such applications do not contradict the law and do not contain information that insults human honor and dignity. Applications by a person are submitted to a public or private notary duly formalized and in at least two copies, one of which is sent by mail with feedback or in person to the addressees to whom the letter was sent, with a receipt.

Applications from individuals may also be transferred using technical means, at least two copies. In this case, the second copy of the application is returned to the person who submitted it. If the application is sent by person by mail, it is supplemented by a cover letter from a notary, and a

copy of which is attached to the copy of the application left by the private notary or in the notary office. Such a copy of the application shall indicate the registration number under which the public or private notary registered such transfer of the application, as indicated by the payment of the state fee by the state notary, as well as the amount of fee collected by the private notary.

When a person personally transfers an application, a public or private notary must take a receipt from the addressee that the application was received.

The receipt may also be made by the recipient on the second copy of the text of the application, which is kept by a private notary or a state notary office. The receipt must indicate the full name of the addressee, as well as the name of the document and the time of its receipt.

However, if the addressee refuses to receive the application, he/she is invited to state in writing the reasons for such refusal. And the text of such receipt is fastened by the signature of the person who received the document. If the document was received by a representative of a legal entity, then the receipt, in addition to the signature of the person, must also indicate the position of the representative, last name,

first name, patronymic of the representative, the seal of the legal entity, if any.

At the request of the person who submitted the application, the public or private notary shall issue the relevant certificate of transfer of the application.

The notary shall state in the certificate the content of the response received to the citizen's application or that the response to such application, within the term established in the application, has not been received.

Please note that the transfer of the application, as well as the issuance of a certificate of transfer of the application are notarial acts and must be registered in the register for registration of notarial acts, under separate numbers.

A person who applies to a notary public to perform such a notarial act not only pays a state fee, but must pay the costs associated with either postal delivery or the use of other technical means.

8.5. Notarial proceedings for the issuance of duplicates of notarial documents.

The term "duplicate" means that a second copy of any document is issued. This copy has the same force as the original document, i.e. they are equivalent [12, p. 381].

In practice, a duplicate of a document is a direct reproduction of the text of the original document, the duplicate of which is issued, which is a separate notarial act.

In case of loss or damage of a document certified or issued by a public or private notary, an official of consular offices or an official of a local self-government body (according to Article 53 of the Law of Ukraine "On Notaries"), a person has the right to apply for duplicates to the above-mentioned notarial bodies which keep the original documents.

We agree with the opinion of O. Korotyuk that the issuance of a duplicate of the document covers two separate aspects of notarial activities: firstly, it is the performance of a notarial act, and secondly, it is the issuance of information that is the subject of notarial secrecy.

It should be emphasized that the reference in the provisions of Article 53 of the Law of Ukraine "On Notaries" to the provisions of the Article 8 of the Law of Ukraine "On Notaries" states that the legislator is associated with the right to receive the above-mentioned information (i.e. duplicates of documents) - such information that is available only to a limited number of subjects, taking into account the need for keeping the notarial secrecy.

We also draw attention to the importance of determining the appropriate subject who has the right to receive a duplicate, as the issuance of a duplicate to an improper person has the effect not only of violating the rules of notarial acts, but also notarial secrecy [21, p. 363].

Analyzing the norms of current legislation, in particular Article 53 of the Law of Ukraine "On Notaries", we conclude that a duplicate of a document can and should be issued only in case of loss and damage to the original of such a document.

To some extent, O. Korotiuk is right, claiming that it is legally wrong for a public or private notary or other official of quasi-notary bodies to demand an application for a duplicate of a document from an individual who was a party to the contract, and a copy of the said contract such a person did not lose or it was not damaged [21, p.364].

However, in our opinion, if the gift agreement is in two copies, one of which is issued to the donee, in our opinion, the donator is still entitled to receive a duplicate of such a gift agreement.

It is worth focusing on certain peculiarities of the issuance of duplicate of documents that have been certified (transactions) or issued (various certificates, including certificates of inheritance) by notaries.

Public and private notaries, only in the case of a written application from a person who has lost or damaged a certified document, issue such a person a duplicate of the above-mentioned notarial document.

Similarly, the state and private notaries may issue duplicates of notarial documents to a person who acts under a power of attorney on behalf of persons who performed notarial acts at the said notary, which was lost by the principal's attorney or the document was damaged by him/her.

Notaries also have the right to issue duplicates of documents (lost or damaged, the originals of which are kept by notaries) to the heirs of persons who were parties to notarial transactions or in respect of whom notarial acts were performed. Duplicates may also be issued to persons acting on behalf of the above-mentioned heirs, the executor of the will of the deceased citizen, another notary who conducts the

inheritance case after the deceased, but only at the request of such a notary.

In this case, in order to issue a duplicate of the documents kept by them, a public or private notary must, in addition to the death certificate of persons who were participants in the transactions or in whose favor the notarial acts were performed by the above-mentioned notaries, also submit documents confirming their (applicants) family relations or certificate of executor of the will.

Private notaries keep the deeds transactions by them and the certificates issued by them until the termination of their notarial activity. Only in case of its termination (notarial activity) the private notary is obliged to transfer all his/her notarial archive to the state notarial archive.

On the contrary, documents (completed by notarial proceedings) are stored in the state notary office for 10 years, and after the expiration of the specified period are also transferred for storage to the state notary archive.

Thus, before notaries submit to the notarial archive copies of documents certified or issued by both private and public notaries, duplicates of lost or damaged documents are issued by notaries who performed these notarial acts, i.e. at the place of storage of the original transaction or certificate.

It should be reminded that the issuance of duplicates of lost or damaged notarial documents is also carried out by the state notarial archive, which operates in each regional center of the state.

Such a notarial act as the issuance of duplicates of notarial documents is the main action of notaries of the state notarial archive.

Issuance of duplicates of notarial documents by state notaries of state notarial archive is possible only in relation to documents stored in this archive and which were previously transferred for safekeeping by state or private notaries or relevant officials of local governments.

Thus, until receiving copies of documents in the notarial archive, it as an institution and its representative, the head of the state notarial archive or the state notary of the state notarial archive is not entitled to issue a duplicate of "not transferred" notarial document.

We emphasize that the state notary archive or state notary office (heads and state notaries of the above-mentioned organizations) also issue duplicates of wills received by them for storage from officials authorized to certify wills, equated to notarized, according to Article 40 of the Law of Ukraine "On Notaries".

Issuance of a duplicate of document has the following legal consequences: firstly, it is the creation of an additional copy of the document; secondly, it is the expiration of a document, a duplicate of which is issued [21, p.365].

We emphasize that it is impossible for a public and private notary to issue a duplicate of power of attorney that has already expired.

Please note that in case of death of the heirs, specified in the text of the will, the public or private notary may issue a duplicate to the heirs of the person specified in the will, but only after they (applicants) submit a death certificate of both testator and deceased heir.

We emphasize that a duplicate of a mystic will is not issued by public and private notaries.

Before issuing a duplicate of a lost power of attorney, a public or private notary must verify the validity of the power of attorney (a duplicate of which is issued) according to the Unified Register of Powers of Attorney.

We note that duplicates of lost powers of attorney must be registered by public or private notaries in the Unified Register of Powers of Attorney, guided by the provisions of the Regulations on the Unified Register of Powers of Attorney.

The procedure for performing notarial acts by notaries of Ukraine establishes requirements for the content of a duplicate document.

Firstly, a duplicate of a notarial document (transaction or certificate) must contain absolutely the entire text of the document certified or issued by a notary (i.e. such an original transaction or certificate, which is considered invalid).

Secondly, on the duplicate of the issued document (transaction or certificate) the public or private notary makes a note that it (duplicate) has the force of the original.

Thirdly, a public or private notary makes a notary certification on a duplicate document.

In addition, a public or private notary must mark the issuance of a duplicate document on a copy of the document (transaction or certificate), which is kept in the files of the state notary office where the public notary works or in the files of private notary.

Section 9.
PECULIARITIES OF REGISTRATION OF THE RIGHT TO INHERITANCE BY THE NOTARY.

We completely agree with the scientist N. Kulak, who notes that the legal relations of inheritance are quite specific for the following reasons.

Firstly, in essence, they are impersonal, because death terminates the legal capacity of the testator, and his/her duties and rights pass to the heirs in the order of hereditary succession, which has such a peculiarity as the universality of inheritance (rights and obligations are fully transferred to the heir as a single complex, which occurs simultaneously on the basis of the act of acceptance of the inheritance).

Secondly, the existence of the actual composition is stated, which is directly provided by law (the fact of actions to make a will, the fact of death of the testator, the fact of acceptance of the inheritance by will or by law) [23, p. 122].

Undoubtedly, the notary is the most effective institution for the protection and defense of the rights and interests of both individuals and legal entities. The

realization of the right to inheritance, as well as the adoption of measures for the protection of hereditary property are accompanied by a number of notarial acts, which must be carried out within the general and special rules in accordance with the content of a separate notarial case.

The procedure, grounds and limits of notarial proceedings are determined by law: the Constitution of Ukraine, the Law of Ukraine "On Notaries", the Law of Ukraine "On Private International Law".

The Law of Ukraine "On Notaries" and other national legislation does not define the concept of "notarial proceedings for the registration of the right to inheritance" or "notarial proceedings for the issuance of a certificate of inheritance rights", the introduction and application of such concepts is carried out by scientists-theorists to cover procedural actions in notarial process and their coverage by procedural norms. Accordingly, arises the question of the need to combine the procedural norms of the notarial process into a separate regulatory legal act.

Notarial proceedings act as legal facts both for notarial legal relations and for material legal relations, in particular hereditary ones [5, p. 55].

Scientists in the field of theoretical research of the notarial process distinguish a separate group of notarial proceedings of inheritance or notarial

proceedings for the issuance of a certificate of inheritance, which have a long review time and have a high level of complexity associated with inheritance of various objects of inheritance, which outlines a wide range of relationships covered by these proceedings.

“According to additional functions, notarial proceedings can be considered as facts that are aimed at establishing the legality of property circulation, and confirm the already existing civil relations, promote the realization of subjective rights. Issuance of a certificate of inheritance, in a given aspect, will confirm the presence of the heir who accepted the inheritance, the right to it, and the function of promoting the right to inherit will consist in the registration of certificate and transformation into ownership after registration of inheritance in the registering body" [5, p.56].

We agree with the opinion of M. Bondareva that “the realization of the subjects of hereditary legal relations and other persons of their rights and obligations takes place in the procedural form determined by law. Notarial proceedings, within which the establishment and accumulation of legal facts occur - the prerequisites for the implementation of hereditary legal relations, we propose to combine under the general wording of "inheritance proceedings". It is seen that the definition of the range of notarial

proceedings that can be classified as "hereditary" should be carried out taking into account the essence of those specific substantive legal relations, by the way, not necessarily hereditary, which are implemented in the form of notarial procedures; the course of formation of the legal structure, which generates the implementation of the inheritance relationship, the obligation to apply the notarial procedure, taking into account the composition of the inheritance; practical possibility of realization of certain means of protection of hereditary rights exclusively within the notarial procedural form" [6, p. 4].

Scientist M. Bondareva defines “hereditary notarial proceedings as an element of complex legal structure, within which the hereditary legal relationship is realized, because the theoretical construction of the hereditary legal relationship from a practical point of view means a certain sequence of facts that occur, take place, are committed by heirs and other authorized persons in accordance with rules defined by law, within special legal procedures, in order to ensure the transfer of inheritance to the legal successor" [6, p. 5].

Acceptance of inheritance is one of the ways to exercise the right to inheritance, which is carried out within the relevant time limits set by law (six months from the date of opening the inheritance, Part 1 of Article 1270 of the Civil Code of Ukraine).

The expression of a person's will to exercise his/her right to inherit requires the legal formalization of the legal status of the heir, which occurs through the registration of the right to inherit by verifying the legal facts for inheritance and issuing a certificate of inheritance.

In notarial practice, there are often debatable issues in the implementation of the processual procedure for issuing a certificate of inheritance, views on their solution differ between practitioners and theorists.

"We share the author's opinion that the legal nature of the act of acceptance of inheritance, which is a transaction, i.e. the action of a person aimed at acquiring, changing or terminating civil rights and obligations (Part 1 of Article 202 of the Civil Code of Ukraine), is in conscious will of a person to accept the inheritance and does not agree with the concept of automatic acquisition of inheritance on the basis of the fact that the heir was permanently living with the testator at the time of opening the inheritance. E. O. Ryabokon, calling the actual acceptance of inheritance a peculiar way of accepting inheritance, not without reason singles out the word "method". The method as a category of verbs expresses the relationship of action or state to reality. Hence it follows that in the case of a formal method of acceptance of inheritance occurs the

expression of the heir's relationship to reality (hereditary legal relationship) by action (filing an application for acceptance of inheritance), and in the case of the actual method of acceptance of inheritance the legislator's attitude to the legal fact (state) by establishing a presumption in connection with the granting of such a state a certain legal significance" [45, p. 96; 42, p. 130-131].

Regardless of the way in which a person exercises his/her right to inheritance, it is necessary to comply with the legally established algorithm of actions by both the notary and the heir.

In practice, notarial proceedings in the case of inheritance consist of several active stages, i.e. a set of procedural actions combined for one purpose.

When issuing a certificate of inheritance, the notary is obliged to perform a number of actions to verify the circumstances that must be documented: the death of the testator, the time and place of opening the inheritance, the grounds for calling for inheritance, if there is inheritance by law, acceptance by the heir of inheritance in the manner prescribed by law, the composition of the hereditary property.

The first stage of notarial proceedings for registration of the right to inheritance is the opening of the inheritance and the establishment of an inheritance case which is subject to mandatory registration in the

book of accounting and registration of inheritance cases, Alphabetical book of inheritance cases and in the Inheritance Register. At this stage, the notary "clarifies information about the death of the testator, time and place of opening the inheritance, the circle of heirs, the presence of a will, the presence of inherited property, its composition and location, the need to take measures to protect inherited property" [35].

At this stage, the notary verifies, by requesting a death certificate or direct access to the register of civil status, the fact of death and the time of opening of the inheritance, as well as whether the documents issued by competent authorities of foreign countries to certify civil status if committed outside of Ukraine were legalized.

The definition of the circle of persons who will be called to inherit acquires certain peculiarities, in some cases the determination of the moment of opening the inheritance with certain nuances: if within one day died persons who could inherit one after another, if several persons who could inherit one after another died during a common danger (natural disaster, accident, catastrophe, etc.), it is assumed that they died at the same time or if the heir died a few hours after the testator, but the next day, these circumstances are important to determine the circle of heirs.

The correct determination of the time of opening the inheritance is extremely important, as it affects the determination of the number of persons who will be called to inherit, the composition of the inheritance, the beginning of the period for acceptance or refusal of inheritance, presentation by the creditor of the testator of claims to the heirs, as well as in resolving other issues of inheritance [27]. It is believed that in the case of inheritance of children after both parents (if one parent died after the other before the children applied for inheritance after the first) it's the need to unite in one inheritance case by filing one application for inheritance immediately after each parent, as this will help eliminate the accumulation of documentation and in the notarial proceedings for the issuance of a certificate of inheritance and reduce payments, and in turn will not violate the procedural order and will not affect the legal significance of issued certificates of inheritance [40].

We do not deny the possibility of such a merge of inheritance cases, but in our opinion the use in practice of such a merge will not always be possible, because in the exercise of children's right to inherit by using such a construction may be different nuances depending on the time of opening the inheritance on each of the parents, the dependence of the acceptance of inheritance of the other parent in the case of living

with the other until the opening of the inheritance and a number of other peculiarities that call into question the possibility of combining inheritance cases in practice.

It is believed that the notarial proceedings in the inheritance case begins with the duty of the notary to notify the heirs of the opening of the inheritance. E. O. Ryabokon notes that “the form of notarial service for notification of heirs should be notarial proceedings, be carried out legally competently, and should have an officially defined legal content and cases of application. Therefore, it is necessary not only to regulate the procedure and content of the proceedings for the notification of heirs, but also to provide for appropriate payment for this. Payment for this notarial act must be counted separately, despite the fact that it is part of a single notarial process for the issuance of a certificate of inheritance, which can be explained as non-binding nature for all processes. Proof of receipt of the message must be the handwritten signature of the addressee on the return mail notification of the notary's application" [32, p. 125].

E. O. Ryabokon notes that if the notary does not fulfill the obligation to notify about the appeal to the inheritance, the heirs will not be able to exercise their right to inherit [42, 125]. In turn, the lawyer B. S. Shcherbyna substantiates the position that the notary should notify only those heirs whose data are accurate,

i.e. about whom he/she was informed by the heirs who have already submitted an application for acceptance of the inheritance. In practice, it is not justified and there is no hope for the righteousness of the heirs who have already applied to a notary. Also, she concludes that in fact the notary is deprived of the opportunity to establish the actual range of heirs who could claim the inheritance and the case law assumes that notaries are not responsible for not notifying the heirs. Thus, the decision of the Court of Appeal of Odessa oblast of August 15, 2007 actions of the notary were recognized as lawful, given that the heir, filing an application for acceptance of the inheritance in the form of a disputed household, did not indicate that there are other heirs; the notary did not know that the plaintiff was the heiress and the notary did not know the place of residence and work of the plaintiff. Therefore, the judicial board came to the conclusion that there were no violations of Art. 63 of the Law "On Notaries" in the actions of the notary [47, p. 95].

According to the Procedure for notarial acts by a notary, in order to accept an inheritance, it is necessary to personally submit an application to a notary for its acceptance, which is the basis for opening an inheritance case and does not provide for merging of inheritance cases in case of opening

inheritance cases concerning the same hereditary mass but from different testators.

An important point in determining the order of notarial proceedings for registration of inheritance rights is to determine by notary whether there is another surviving spouse, because before issuing a certificate of inheritance to all heirs, there is a need to issue a certificate of ownership of the joint property of the spouses, provided stay of the spouse in a registered marriage and acquisition of property during the marriage in the name of the deceased spouse. The application for the issuance of a certificate of ownership of a share in the joint property of the spouses is submitted regardless of the submitted application for acceptance of inheritance and the issuance of a certificate of inheritance.

The next point for the notarial proceedings for the issuance of a certificate of inheritance is the place of opening of the inheritance which is confirmed by: certificate of registration / last residence of the executive body of the village, town or city council, village head (if in accordance with the law the executive body of the village council is not formed), which registers, deregisters the place of residence of a person in the relevant administrative-territorial unit, which is subject to the powers of the relevant village, town or city council, or other

document that can confirm the relevant fact (copy of death certificate, house book etc.) [35].

The death certificate is not a document on the basis of which the place of opening of the inheritance is established. Accordingly, the place of opening the inheritance determines where the notary will start the inheritance case on the basis of the submitted (or received by mail) first application (notice, telegram) on acceptance of inheritance, refusal to accept inheritance, refusal of inheritance, application for withdrawal of application for acceptance inheritance or refusal of inheritance, application for a certificate of inheritance, application of the heir to receive part of the testator's deposit in the bank (financial institution), application for issuance of a certificate to the executor of the will, applications of the executor of the will on refusal to exercise his/her powers, applications of the other spouse on the issuance of a certificate of ownership of a share in the joint property of the spouses in the event of the death of one of the spouses, application of measures to protect the inherited property, creditors' claims [35].

At this stage, the notary establishes the question of the absence or presence of an already established inheritance case, will, inheritance agreement, as it determines the further course of notarial proceedings in

the inheritance case, which determines one of the options for further action of the notary:

1) in case of an already established inheritance case - refuses to accept the application for the issuance of a certificate of inheritance;

2) in case of an already established inheritance case, in case of incorrect determination of the place of opening of the inheritance - requires this case for further proceedings;

3) in the case of a will - by sending a request to the notary who certified it, receives full information about the will by a notary and the original or duplicate of the will.

Of particular importance is the determination of the place of opening of the inheritance in cases of death of servicemen, as well as persons who studied in educational institutions outside their place of residence, after the death of a citizen in a nursing home for the disabled, veterans, single people and the elderly, another social institution, after persons who died in penitentiary institutions, is recognized as the last place of residence before arrest (detention), after the death of a citizen who lived in a monastery, temple, other religious house or if the place of residence of the testator is unknown.

The notary requires a certificate from the place of preliminary registration on the deregistration of the

testator in connection with moving to another locality and a certificate of the relevant registration authority of the locality that the testator is not registered, to confirm the fact that it is impossible to establish the testator's residence; accordingly, on this basis, the question of the possibility of determining the place of opening of the inheritance by the location of real estate or its main part is resolved [27].

At the second stage of notarial proceedings, the notary prepares for the performance of notarial acts on the issuance of a certificate of inheritance and determines the possibility or impossibility of notarial proceedings.

According to the law, the notary is obliged to verify the existence of grounds (confirmation of residence with the testator, family or other relationship with the testator) to call for inheritance of persons who have applied for acceptance of the inheritance.

In the case when it is seen from the legal document, when formalizing the inheritance both by law and by will, that the property may be jointly owned by the spouses, the notary must find out whether the testator has a spouse who survived him/her, and who may be entitled to 1/2 share in the joint property of the spouses.

The notary, verifying the submitted documents (confirmation of family relations, the fact of incapacity

for work or detention), certifies copies of documents marked "according to the original", signs, seals and attaches them to the inheritance case.

Inherited property, regardless of whether it is concentrated in one place or not, at the time of the opening of the inheritance acts legally as a single complex, whatever the rights and obligations were the part of it. This is a prerequisite for universal succession, which is characteristic of inheritance [46, p. 293]. In addition, even before the acceptance of the inheritance, it may be necessary to take a number of actions in the interests of the testators, creditors of the testator in order to preserve the inherited property: actions aimed at protecting the inherited property in accordance with Part 1 of Art. 1283 of the Civil Code of Ukraine. Taking measures to protect inherited property is one of the most important notarial acts that guarantees the protection of property rights of citizens.

Thus, "protection of hereditary property involves a number of actions, including description and assessment of the identified property, its transfer for safekeeping to heirs or third parties, notification of relevant organizations and persons ensuring the proper legal regime of inheritance (law enforcement agencies, Society for the Protection of Historical and Cultural Monuments, etc.), the presence of such property in the inheritance, verification and control of the proper

performance of duties on the safety of hereditary property by responsible persons" [10, p. 161 - 162].

According to the current legislation, the grounds for taking measures to protect hereditary property are appeals of heirs, court decisions declaring an individual dead or notification of enterprises, institutions, organizations, citizens (Article 60 of the Law of Ukraine "On Notaries", Part 2 of Article 1283 of CC of Ukraine). Measures to protect hereditary property can be taken at the initiative of the notary, which is explained by the essence of notarial activities that are designed to ensure compliance and protection of property rights of citizens. However, in this case it should be noted that this is the right of a notary, not a duty [45, p. 143].

The following stages of taking measures to protect hereditary property are determined:

1) acceptance of the application on taking measures for protection of hereditary property;

2) carrying out preparatory actions (requesting and obtaining all necessary documents, resolving the issue of involving witnesses, the need to involve an expert or appraiser, etc.);

3) description of hereditary property;

4) protection and storage of the described hereditary property [17, p. 143].

Before taking measures to protect the inherited property, the notary performs a number of actions that ensure the full protection of this property, namely:

- determines the place of opening of the inheritance, the presence of hereditary property, its composition and location;

- verifies the existence of the inheritance case according to the Inheritance Register. If the inheritance case is not opened, the notary registers the application for taking measures to protect the inheritance property also in the Book of accounting and registration of inheritance cases, starts the inheritance case and registers it in the Inheritance Register;

- finds out whether previous measures have been taken to preserve the inherited property. If such measures have been taken, then - by whom, when and how (whether the room was sealed, where are the keys to this room, etc.);

- informs about it those heirs whose place of residence or work is known to him/her. The notary may also summon the heirs by public announcement or press release;

- notifies the housing maintenance bodies and, if necessary, the internal affairs bodies and other interested persons (creditor) about the description of the testator's property;

- notifies the relevant local government body, if there are grounds to believe that the inheritance may be considered dead;

- takes measures to involve witnesses in conducting the description of the property [45, p. 143].

The notary is obliged to arrive at the location of the property to make an act of hereditary property after receiving the application and taking all necessary preliminary measures to make an act of property description:

- date and time of making the act of description, last name, first name, patronymic of the notary who conducts the description;

- the name of the state notary office or notarial district in which the private notary is registered;

- the date of receipt of the application for taking measures to protect the hereditary property (notice of the description of the hereditary property) or the power of attorney of the notary, who opened the inheritance case, to take measures to protect the hereditary property;

- last name, first name, patronymic, address, and if necessary - place of work and position of persons involved in the description;

- last name, first name, patronymic of the testator, date of his/her death, place of opening of the inheritance and location of the hereditary property;

- information about the heirs;

- information on whether the premises were sealed before the arrival of the notary and by whom, the condition of stamps and seals, if the premises are sealed.

When making the act of description of hereditary property, the notary must describe in detail the characteristics of each item separately (color, weight, denomination, size, grade, brand, year of issue, and for foreign currency - the note, its denomination, value at the rate of the National Bank of Ukraine, etc.) and determine their value, taking into account the percentage of wearing out. The establishment of the value of the described things (including wearing out) is carried out jointly by the notary and the persons participating in the description of the hereditary property, at current prices. Real estate is valued based on the market value of such property. It is forbidden to determine only the total value of the property without assessing and detailing each item separately [27].

After verification by the notary who opened the inheritance case, all legal facts that give grounds for the issuance of a certificate of inheritance, if all the necessary documents and information are available in the inheritance case, the transition to the final stage of notarial proceedings for registration of inheritance

takes place and is the realization of the right to inheritance in full.

The third stage, starts after six months from the opening of the inheritance and ends with the issuance of a certificate of inheritance by law or a certificate of inheritance by will, the issuance of a certificate of inheritance to heirs who have accepted the inheritance is not limited.

After six months from the date of opening the inheritance, the notary issues a certificate of inheritance, and if the person's right to inherit depends on non-acceptance of the inheritance or refusal to accept it by other heirs, after three months from the date of non-acceptance of inheritance or refusal from its acceptance [48].

An exception to the general rule of issuing a certificate of inheritance for a period of six months from the date of opening the inheritance is also the case if the heir by will or by law died after the opening of the inheritance and failed to accept it, the right to accept the his/her share of the inheritance, except for the right to accept the mandatory share in the inheritance, passes to his/her heirs (hereditary transmission), is carried out on a general basis for the remaining period, but if the period is less than three months, it is extended to three months [48].

A certificate of inheritance is issued to each heir, and in case of inheritance by a minor or incapacitated heir, the notary is obliged to notify the guardianship authorities, to protect their property interests, about the issuance of a certificate of inheritance at their place of residence.

In the case of issuance of a certificate of inheritance by will, the notary identifies the heir specified in the will with the person claiming the inheritance, if the will indicates a family relationship with the testator, the notary must verify the documents confirming this fact. Accordingly, if the heirs deem it necessary, the notary in the certificate of inheritance by will may also indicate the family relationship with the testator [27].

The issuance of a certificate of inheritance is of great legal importance, as it serves as evidence of the legality of the transfer of rights to inherited property and is the basis for the assignment of these rights to the heir. In turn, the legislative consolidation of the processual procedure for issuing a certificate of inheritance is to protect the interests of heirs by law, by identifying them in notarial proceedings and the distribution of the hereditary mass and depriving the possibility of alienation of inherited property before the six-month period for acceptance of inheritance. Despite the legal significance of the certificate of

inheritance, obtaining a certificate is a right and not an obligation of the heir, as failure to apply for a certificate does not deprive the right to inherit.

The need to obtain a certificate of inheritance arises in the case of inheritance of property or property rights that require documentary evidence, if inherited property that is not subject to registration and the right to which cannot be confirmed by the legal document to apply for a certificate of inheritance is not required. The notary must verify the absence of prohibition or seizing of property if it is subject to registration, and only in the absence of such prohibition or seizing, issue a certificate. If there is a ban on the alienation of inherited property, the notary is obliged to explain to the heirs their obligations arising in connection with this legal relationship. The issuance of a certificate of inheritance is postponed in case of seizing by investigative bodies or judicial authorities on the inherited property, until its removal [27].

For the issuance of certificates of inheritance of certain objects of inheritance, the notary may issue it, provided that the relevant documents are provided by the heirs, depending on the object of inheritance:

- land plot: state act on land plot ownership, extract from the State Land Cadastre on the absence of restrictions (encumbrances) on land plot, as well as an extract from the technical documentation on the

normative monetary valuation of land plot - for the issuance of a certificate of inheritance of land plot (certificates of inheritance of the land plot are not issued on the basis of a state act, in particular, which contains corrections, in this case the issue of registration of inheritance rights is decided by the heirs in court);

- intellectual property rights: extract from the relevant state register (State Register of Certificates of Ukraine of Marks to Goods and Services; State Register of Patents of Ukraine for industrial designs; State Register of Patents of Ukraine for inventions; State Register of declaratory patents of Ukraine for utility models, etc., whereas the ownership of an invention and a utility model is attested by a patent (declaratory patent), an industrial design by a patent, and a mark for goods and services by a certificate;

- shares of joint stock companies as securities:

- shares, certificate (security form issued to the holder of the security and containing the details specified by law and the name of the security type (share, bond, etc.) or the name "certificate of shares (bonds), etc." and certifies ownership of the security) because in case of documentary form of issue of shares, shareholders may be issued certificates instead of shares;

- extract from the securities account, extracts from the electronic register of rights of owners of registered securities in the undocumented form of issue of shares.

Both the share certificate and the securities account extract are not securities, but documents confirming the ownership of the shares and on the basis of which certificates of inheritance is issued. It should be borne in mind that in all cases, certificates of inheritance must be issued for shares. Shares, certificates of shares, extracts from securities accounts, as well as certificates issued by notaries on the basis of the right to inherit shares must contain in their texts all the requisites listed in part twelve of Article 4 of the Law of Ukraine "On Securities and Stock Market" [39; 27].

- share in the authorized capital of the company: extract from the Unified State Register of Legal Entities and Individuals with mandatory indication of the share of the deceased participant in the company, and a certificate signed by the head of the company, and if provided by the staff list, the accountant, on the size in percentage terms of the share in the authorized capital of the company of the participant of the company and its monetary value.

According to the Rules of Notarial Records [36], the notary must set out the text of the certificate

of inheritance, which is made in two copies, the text must be clear, concise, competent, must not have erasures, in compliance with the current law. If there are several heirs, each of them is issued a separate certificate indicating his/her share. The shares of the heirs in the certificate of inheritance are indicated in the form of a simple fraction in numbers and words.

One of the copies is set out on a special form of notarial documents and issued to the heir, the second - is sewed in the inheritance file.

In the register for registration of notarial acts the heir confirms with the signature the fact of obtaining of the certificate of inheritance.

The peculiarity of registration of the right to inheritance is characterized by the realization of the right to inherit by a non-resident heir. According to O.I. Danilova, in fact, in this case it is necessary to distinguish the following stages: the preparatory stage, registration of the power of attorney, obtaining a taxpayer card, issuance of inherited property, registration stage, the stage of annual declaration [11]. Despite the fact that not all these stages are within the scope of notarial proceedings, the period from the moment of opening the case of inheritance to the moment of formation and sending to the archive of the registration case exceeds six months.

"As for the moment of termination of the notarial procedural legal relationship, the onset of this moment may take place at different stages of the process - from the moment of resolving the issue of opening proceedings in the inheritance case to the stage of its performance. At the same time, there is a direct connection between the stage of development of the procedural legal relationship and the course of the process: detection of signs of disputable legal relationship entails postponement of proceedings for the reasons specified in the Law of Ukraine "On Notaries", and possibly suspension of notarial proceedings" [6, p. 6].

According to scientists, not only the rules of substantive law regulate inheritance legal relations, but also because of the peculiarity of the notarial process aimed at protecting the rights of subjects of notarial relations, it directly affects the process of inheritance. The authors propose to talk about the hereditary process as a set of legally significant actions of the subjects of hereditary legal relations, which can be carried out both within the notarial process and outside of it [8, p. 8 - 9].

CONCLUSIONS

Notarial proceedings are characterized as a set of procedural actions performed by a notary and other subjects of the notarial process, which are aimed at certifying undisputed rights and facts and performing other notarial acts in order to provide them with legal authenticity in the manner prescribed by law.

In the science of civil law, there are many classifications of notarial proceedings according to different criteria, depending on the characteristics of specific notarial acts.

Notarial proceedings, as legally regulated activities, are formed by stages, which together form a single procedural whole. Each stage consists of a set of procedural actions, which are specific to a certain category of notarial acts.

The concept of notarial procedure is defined as the procedure established by law for notarial acts by entities authorized on behalf of the state, as well as a set of statutory rules governing the sequence and possible behavior of subjects in notarial relations.

Establishment of a single, mandatory and agreed notarial procedure for all persons authorized to perform notarial proceedings, which will take into account the specifics of notaries, consuls and provide for their

interaction to protect and defend the rights of individuals and legal entities requires clear legislation.

One of the most responsible procedures for performing notarial acts is notarial proceedings for the certification of contracts, which has its own specific peculiarities compared to notarial proceedings for the performance of other notarial acts. The study of these peculiarities and their enshrinement in law is the key to the proper performance of the notary's duty to perform notarial acts, and hence - a reliable protection of the rights and interests of citizens.

One of the most common notarial acts is the certification of powers of attorney and wills. Despite the extensive experience of notaries in their certification and extensive practice, today's challenges encourage the improvement and modernization of notarial proceedings for the certification of these transactions.

A special procedure is carried out by a notary, which allows a person to exercise his/her right to inheritance, and in order to protect the rights of the person and his/her property to take measures to protect the inherited property.

The civil legislation of Ukraine does not define the concept of "notarial proceedings for registration of inheritance rights" or "notarial proceedings for the issuance of a certificate of inheritance", instead, the use

of such concepts is carried out by theoretical scientists to cover issues of procedural actions in the notarial process and cover them in procedural norms. Accordingly, the question arises of the need to combine the procedural norms of the notarial process into a separate regulatory legal act.

Scientists in the field of theoretical research of the notarial process distinguish a separate group of notarial proceedings in inheritance or notarial proceedings for the issuance of a certificate of inheritance, which have a long review time and have a high level of complexity associated with inheritance of various objects of inheritance, which outlines a wide range of relationships covered by these proceedings.

The peculiarities of performing other notarial acts highlighted in the monograph will help increase the level of legal awareness of citizens who apply for the performance of these notarial acts, as well as contribute to a correct understanding of the possibility of performing these notarial acts. For example, the procedure for issuing notaries duplicate documents serves as a "hint" for the procedure for applying to the notary of an individual who has lost a notarized document.

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Scientific publication

Dolynska Mariia
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PECULIARITIES OF CERTAIN TYPES OF NOTARIAL PROCEEDINGS IN UKRAINE

Monograph

Підписано до друку 25.11.2020 року.
Формат 60x84/16.Папір офсетний. Друк цифровий.
Гарнітура TimesNewRoman. Умовн. друк. арк. .
Наклад 100 прим.

Видавець:

Свідоцтво

Навчально-науковий Інститут права, психології та інноваційної освіти Національного університету «Львівська політехніка»
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